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15-558

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 231.

CHARLES GUIDET, APPELLANT,

VS.

THE CITY OF BROOKLYN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED AUGUST 20, 1879.

SUPREME COURT OF THE UNITED STATES.

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1 The President of the United States of America to the city of Brooklyn, greeting:

You are hereby commanded that you personally appear before the judge of the circuit court of the United States of America for the eastern district of New York, in equity, on the first Monday in March, A. D. 1874, wheresoever the court shall then be, to answer a bill of complaint exhibited against you in the said court by Charles Guidet, and to do further and receive what the said court shall consider in that behalf, and this you are not to omit under the penalty on you of two hundred and fifty dollars.

Witness the Hon. Nathan Clifford, senior associate justice of the Supreme Court of the United States, at the city of Brooklyn, on the 29th day of January, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States of America the 98th.

[L. S.]

SAMUEL T. JONES, *Clerk*,
By E. B. HUSTED, *Deputy*.

EDMONDS & FIELD,
Complainant's Solicitor.

The defendant is required to enter appearance in the above cause, in the clerk's office of this court, on or before the first Monday of March, 1874, or the bill will be taken "pro confesso" against it.

SAMUEL T. JONES, *Clerk*,
By E. B. HUSTED, *Deputy*.

EDMONDS & FIELD,
Complainant's Solicitor.

2 I hereby certify that on the 29th day of January, in my district, I personally served the within subpœna on John W. Hunter, the mayor of the city of Brooklyn, by showing to him this original, with the seal of the court thereon, and at the same time by leaving with him a copy thereof.

Jan. 31, 1874.

S. R. HARLOW,
U. S. Marshal.

(Indorsed:) U. S. circuit court, eastern district of New York. Charles Guidet vs. The City of Brooklyn. Subpœna ad respondendum. Filed and entered March 2d, 1874.

3 Circuit court of the U. S. in and for the eastern district of New York.

CHARLES GUIDET
vs.
THE CITY OF BROOKLYN. } In equity.

To the honorable the judges of the circuit court of the United States in and for the eastern district of New York:

Charles Guidet, of the city and county of New York, in the State of New York, and a citizen of said State, brings this bill against the city of Brooklyn, a municipal corporation created by the laws of the State of New York, and located in the county of Kings, in the said State.

And thereupon your orator complains and says that heretofore and

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And thereupon your orator complains and says that heretofore and before the twelfth day of January, 1869, your orator was the true, original, and first inventor of a certain new and useful stone pavement not known or used before, and not at the time of his application for a patent in public use or on sale with his consent or allowance.

And your orator further shows unto your honors that your orator so being the inventor of said pavement, and being a citizen of the United States aforesaid, made application to the proper department of the Government of the United States for letters patent, in accordance with the then existing acts of Congress; and having duly complied in all respects with the conditions and requisitions of said acts, on the
4 twelfth day of January, 1869, letters patent of the United States, signed, sealed, and executed in due form of law, for the said invention or discovery, were issued to your orator, whereby there were secured to him, his heirs, executors, administrators, or assigns, for the term of seventeen years from the twelfth day of January, 1869, the full and exclusive right of making, using, and vending to others to be used, the said pavement.

And your orator further shows unto your honors that your orator, having for good and lawful cause surrendered said last-mentioned original letters patent to the Commissioner of Patents, and having made due application therefor, and having in all things complied with the acts of Congress in such case made and provided, did, on the twenty-third day of August, 1870, obtain new letters patent for the same invention for the residue of said term of seventeen years; which said last-mentioned letters patent were issued in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents, and bearing date the day and year last aforesaid, as by the said last-mentioned letters patent, or a duly authenticated copy thereof in court to be produced, will appear.

And your orator further shows that a description or specification of the aforesaid invention was given in the schedule to the said last-mentioned reissued letters patent annexed, accompanied by certain drawings referred to in said last-mentioned schedule, and forming part of the said last-mentioned reissued letters patent. That the said last-mentioned reissued letters patent, and the said specification thereto annexed (which, or an exemplified copy of which, your orator will produce, as your honors may direct), were duly recorded in the Patent Office.

And your orator further shows unto your honors that, in the month of December, 1872, he filed a bill in equity in the circuit court of the United States in and for the district of New Jersey against one Samuel Barber, for infringement of the said reissued letters patent; that the said Barber appeared and answered the said bill; that your orator replied to the said answer; that proofs were taken on both sides,
5 and that the said cause came on to be heard before his honor Judge Nixon, on final hearing on the pleadings and proofs; and that after argument by counsel for the respective parties, the opinion of the court was delivered that the said Barber had infringed the same, and that a decree was thereupon entered in the said cause for an injunction and *on* account of profits made by the said infringements.

And your orator further shows that your orator extensively applied the said pavement to practical use, and has been, and but for the infringement hereinafter complained of would still be, in the undisturbed possession, use and enjoyment of the exclusive privileges secured by the said letters patent, and in receipt of the profits of the same.

And your orator further shows unto your honors, as he is informed and believes, that the said defendant hereinafter named, well knowing all the facts hereinbefore set forth, is now constructing and using the said patented pavement, or a stone pavement in some parts thereof substantially the same in construction and operation as in the said letters patent mentioned, the exclusive right and privilege to make, use and vend which throughout the United States and the Territories thereof is thus by law vested in your orator.

And so it is, may it please your honors, that the said defendant, as your orator is informed and believes, without the license of your orator, against his will and in violation of his rights, has made and used, and intends to continue still to make and use, the said pavement within the eastern district of New York, all of which is in violation of the said letters patent.

To the end, therefore, that the defendant may, if it can, show reason why your orator should not have the relief hereby prayed, and that it may make a full disclosure and discovery of all the matters aforesaid, and upon the corporal oath of one of its officers, and according to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written, it is required to answer, that is to say:

6 1. Whether the said original letters patent were granted and issued to your orator and reissued to him as hereinbefore set forth?

2. Whether the said defendant has at any time, and when and during what period of time, made, sold or used any and what quantity of stone pavement constructed in whole or in part upon the principles and in the manner described in said letters patent, and where, when, and how it was made and laid? Describe minutely and in detail its construction and mode of operation.

And now, to the end that the defendant may be compelled to account for and pay over the income thus unlawfully derived from the violation of the rights of your orator as above, and be restrained from any further violation of said rights, your orator prays that your honors may grant a writ of injunction, restraining the defendant from any further construction or sale or use in any manner of said patented pavement, or any part thereof, in violation of the rights of your orator as aforesaid, and that the infringing pavement now in possession or use of the said defendant may be destroyed, or delivered up to your orator for that purpose. And also that your honors, upon the entering of the decree for an infringement, as above prayed for, may proceed to assess or cause to be assessed under your direction, in addition to the profits to be accounted for by the defendant as aforesaid, the damages your orator has sustained by reason of such infringement, and that your honors may increase the actual damages so assessed to a sum equal to three times the amount of such assessment, under the circumstances of the wilful and unjust infringement by said defendant as herein set forth. And your orator prays also for a provisional or preliminary injunction, and for such other relief as the equity of the case may require, and to your honors may seem meet.

May it please your honors to grant unto your orator not only a writ of injunction comformable to the prayer of this bill, but also a writ of subpœna of the United States of America, directed to the said The City of Brooklyn, and commanding it to appear and answer unto this
7 bill of complaint, and to abide and perform such order and de-

cree in the premises as to the court shall seem meet, and be required by the principles of equity and good conscience.

GEORGE HARDING,
Counsel for Complainant.
EDMONDS & FIELD,
Solicitors for Complainant.

The defendant is required to answer each of the foregoing interrogatories, numbered 1 and 2 respectively.

EDMONDS & FIELD,
Solicitors for Complainant.

UNITED STATES OF AMERICA, DISTRICT OF ss:

Charles Guidet, the complainant in the foregoing bill named, being duly sworn, says, that so far as the statements therein contained are within his own knowledge, they are true, and so far as they are derived from the information of others he verily believes them to be true. And he further says, that he verily believes himself to be the original, true and first inventor of the new and useful stone pavement which is described in the letters patent granted to him and mentioned in the foregoing bill. And your deponent verily believes that the title of complainant as set forth in said bill is true.

CHARLES GUIDET.

Sworn to and subscribed this 29th day of January, A. D. 1874, before me.

JOHN A. SHIELDS,
U. S. Commissioner.

(Endorsed:) Bill of complaint. Filed January 29th, 1874.

8 Circuit court of the United States for the eastern district of New York.

CHARLES GUIDET
vs.
THE CITY OF BROOKLYN.

SIR: Take notice that I am retained by and hereby appear for the defendant, The City of Brooklyn, as its solicitor, in the above-entitled cause, and that all notices and other papers therein may be served upon me, as such solicitor, at my office in the City Hall, in the city of Brooklyn.

Dated Brooklyn, March 2, 1874.

WILLIAM C. DE WITT.
Sol'r for Defendant.

To SAMUEL T. JONES,
Clerk of the Circuit Court of the United States
for the Eastern District of New York.

EDMONDS & FIELD,
Solicitor for Complainant.

(Endorsed:) Notice of appearance. Filed March 2, 1874.

9 U. S. circuit court eastern district of New York.

CHARLES GUIDET
vs.
THE CITY OF BROOKLYN. } Rule. March 2, 1874.

On reading and filing the notice of appearance of William C. De Witt as solicitor for the above-named defendant, ordered the appearance of said solicitor be and the same is hereby entered.

10 Circuit court of the United States for the eastern district of New York, in the second judicial circuit.

CHARLES GUIDET
vs.
THE CITY OF BROOKLYN. } In equity.

The answer of the defendant, The City of Brooklyn, to the bill of complaint of Charles Guidet, the complainant. The defendant now, and at all times hereafter, saving and reserving to itself all and all manner of benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and imperfections in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as the defendant is advised is or are material or necessary for it to make answer unto, answering, say it is informed that, upon application by said Charles Guidet, letters patent of the United States were granted and issued to the said Charles Guidet on the 12th day of January, 1869, for an alleged improved stone pavement.

And the defendant says that it does not know and is not informed, save by said bill of complaint, whether or not the said Charles Guidet did properly make application for said letters patent, or did comply with all the requirements of law, or did have said letters patent issued to him in due form of law, but the defendant leaves the complainant to make such proof thereof as he shall be advised is material, and require said proof to be made.

And the defendant, on information and belief, denies that by virtue of any such letters patent or reissue, as mentioned in the bill of complaint, said complainant became or ever was possessed of or vested with any exclusive right to make, use, or lay down in the United
11 States, or in the eastern district of New York, or elsewhere, the alleged stone pavement patented by said letters patent.

And the defendant, further answering, says that it is informed and believes it to be true that the description of the alleged pavement as set forth in the specification annexed to said original and reissued letletters patent is incomplete and ambiguous, and the said specification does not show the method of making or using the said alleged patented invention in such full, clear, and exact terms as to enable any person skilled in the art or science to which it appertains, to wit, the art of constructing roads and pavements, to make and use the same.

And the defendant, further answering, denies that the said stone pavement, so patented to the said Charles Guidet, is of great or any utility or value, or that the same had been introduced into public use, or that the public generally, or any portion thereof, had acquiesced in or acknowledged the complainant's exclusive right to the same, or any portion thereof, but, on the contrary, say that the said pavement so patented to said Guidet is impracticable, and never has been used or laid by said patentee.

And the defendant, further answering, upon information and belief denies that the said letters patent, surrendered by said Charles Guidet, were inoperative by reason of any defects or insufficiency in the specification which the said reissue did or was intended to remedy; but the defendant is informed and believes, and therefore alleges, that said letters patent were surrendered and specification of claim was amended with fraudulent and deceptive intention on the part of the said Charles Guidet, and that the said reissue is for different matter from that of the original patent, and embraces matter not in the drawing, model, or specification of said original patent, and is for matter not patentable, and that the claim of said reissued patent is a claim which was rejected by the Patent Office upon the original application of said Guidet and fraudulently inserted upon the reissue.

And the defendant, further answering, says that it is informed
12 and believes it to be true that the same invention and discovery,
and the same improvement in pavement and substantial and material parts thereof patented in and by the letters patent as reissued and mentioned in the bill of complaint aforesaid, was patented on the 31st day of March, 1868, by letters patent No. 76227, granted and issued to Alexander Miller and C. Mason, who reside at Chicago, in the State of Illinois, and prior to the supposed invention and discovery thereof by Charles Guidet, the complainant aforesaid.

And the defendant, further answering, says that it is informed, and believes it to be true, that the said invention and discovery, and the same principle and substantial and material parts thereof, patented in and by the letters patent as reissued and mentioned in the bill of complaint aforesaid, were and are mentioned and described in a certain printed publication; that is to say, in the Repertory of Arts, Manufacture and Agriculture, vol. 25, new series, published at London, England, in the year 1814, by J. Wyatt, at the Repertory office, Hatten Garden, a publication published, issued, and publicly circulated and distributed prior to the supposed invention and discovery by Charles Guidet as aforesaid, the patentee of the said alleged invention, discovery, principle, the said description being on pages 77 to 81 of said publication, and also in the following words, to wit: "Rudiments of the Art of Constructing and Repaving Common Roads," published at London, England, in the year 1855, by John Weale, at 59 High Holborn, a publication published, issued, and publicly circulated and distributed prior to the supposed invention and discovery by Charles Guidet as aforesaid, the patentee of the said alleged invention, the said description being upon pages 121 and 122 of said publication, and in the printed specifications and drawings of the following English letter patent publication, published, issued, and publicly circulated and distributed prior to the supposed invention and discovery by Charles Guidet as aforesaid, the patentee of said alleged invention, the said description being in letters patent to James Horney, dated June 2,
1840, No. 8529; letters patent to Henry Ponkers, dated October
13 15, 1840, No. 8663; letters patent to David Stead, dated May 19,
1838, No. 7645; letters patent to Richard McNamara, dated March 15, 1837, No. 7324; letters patent to Charles P. Henry, dated June 22, 1866, No. 1663; all of which were published by George Eyere and William Spotswood, at Southampton Building, Holborn, England.

And the defendant, further answering, says that it is informed, and believes it to be true, that the said Charles Guidet, patentee as aforesaid, was not the original and first inventor or discoverer of the said alleged invention and discovery, or of any material or substantial part of the thing, or of the improved stone pavement, patented in and by the letters patent mentioned in the said bill of complaint, but that the same thing, and the same stone pavement, or substantially the same, had been previously in public use in South street, in the city of New York, laid by William Mogk, of the city of Brooklyn; in the Bowery, in the city of New York; by the city of Boston, at said Boston, in the State of Massachusetts; by the city of Philadelphia, at the said Philadelphia, in the State of Pennsylvania, prior to the time when it is alleged in said bill of complaint the same was invented and discovered by said Charles Guidet, patentee as aforesaid. And that the same stone pavement, or substantially the same, was known to the following named person, to wit, John Stevens, of New York City, to have been in use in said Bowery, in the city of New York, and prior to the time when it is alleged in the bill of complaint aforesaid the same was invented and discovered by said Charles Guidet, patentee as aforesaid. And that the same was in public use in the United States at cities of Boston and Philadelphia, by said cities, and had been in such use for more than two years before the first day of October, 1868, the date of the alleged application of Charles Guidet, patentee as aforesaid, for a patent therefor.

And the defendant, further answering, says that it is informed, and believes it to be true, that the said invention and discovery, and the same alleged improved stone pavement, patented in and by the letters patent mentioned in the bill of complaint aforesaid, had been
14 previously made and used publicly by said Charles Guidet, and
thereafter, and as early as the 1st day of January, 1867, the same was by the said Charles Guidet abandoned to the public, and was, with the consent and allowance of the said Charles Guidet, in public use in places where it has been laid by or with the consent of said Charles Guidet.

And the defendant, further answering, says that it does not know and is not informed, save by said bill of complaint, whether or not the said Charles Guidet instituted or prosecuted a suit in the United States circuit court for the district of New Jersey against one Samuel Barber for infringement of the said reissued letters patent, or that the judgment of the court was pronounced or that a decree was entered therein as stated in said bill of complaint, but it leaves the complainant to make such proof of said several allegations and statements as he shall be advised is material and requires such proof to be made.

And the defendant, further answering, says that the pavement which it has used and laid is very different in kind from the pavement described in the said letters patent mentioned in said bill of complaint and the specifications thereto annexed; and that it has not infringed and still does not infringe upon any rights and privileges alleged in said bill to be secured to the complainant by the said letters patent.

And the defendant, further answering, denies that it has ever contrived to injure said complainant, or to defraud him of any profits, benefits or advantages whatever, and the defendant denies that it has at any time heretofore laid, put down or used, or is now laying, putting down or using at the city of Brooklyn and eastern district of New York, or elsewhere, any pavement manufactured in accordance with the descriptions set forth in the aforesaid letters patent, and says that it has not in any way infringed and does not in any way infringe said patent. And it says that it has laid a stone pavement in Henry street,

in said city of Brooklyn, but that said pavement is composed of blocks
of stone of rectangular shape, whose sides are all of an equal state
of smoothness, and that the points of said blocks are not close
15 at their narrow ends, nor are any of the edges chamfered off so
as to make the joints open at their broad sides.

And the defendant submits to this honorable court that all and every the matters in the said complainant's bill of complaint mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief from a court of equity, and the defendant craves the same benefit of this defense as if it had demurred to said complainant's bill, and pray that it may have the same advantages of its aforesaid answer as if it had pleaded the several matters and things aforesaid to the bill of complaint in this cause; without this that any other matter, cause or thing in said complainant's bill of complaint contained, material or necessary for the defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of the defendant. All which matters and things the defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

THE CITY OF BROOKLYN,
Defendant.

WM. C. DE WITT,
For Defendant.

UNITED STATES OF AMERICA,
Eastern District of New York,
City of Brooklyn, County of Kings, ss:

John W. Hunter, being duly sworn, says that he is the mayor of the city of Brooklyn, the defendant named in the foregoing answer, subscribed by The City of Brooklyn; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

J. W. HUNTER.

Subscribed and sworn to before me this 6th day of April, 1874.

THOS. T. DE WITT,
Com. of Deeds.

(Endorsed:) Answer. Filed April 6th, 1864.

16 At a stated term of the United States circuit court, held in and for the eastern district of New York, at the court-house in the city of Brooklyn, on the 20th day of April, 1874.

Present, Hon. Chas. L. Benedict, judge.

CHARLES GUIDET
vs.
THE CITY OF BROOKLYN.

On reading and filing the consent that William Hildreth Field be substituted as attorney for the plaintiff, it is

Ordered, that William Hildreth Field be, and he hereby is, substituted as attorney for the plaintiff in the above-entitled action in the place and stead of Edmonds & Field.

CHAS. L. BENEDICT, *U. S. J.*

(Endorsed:)

SIR: Take notice, that the within is a copy of an order this day entered herein; that my office is No. 271 Broadway, New York City.
N. Y. April 20, 1874.
Yours, &c.,

WILLIAM HILDRETH FIELD,
Pl'ff's Att'y.

To W. C. DE WITT, Esq.,
Def't's Att'y.

Due and timely service of a copy hereof is hereby admitted.
Brooklyn, April 20, 1874.

W. C. DE WITT, *Def't's Att'y.*

(Endorsed:) Order of substitution. Filed April 20th, 1874.

17 United States circuit court, eastern district of New York.

CHARLES GUIDET
vs.
CITY OF BROOKLYN.

The replication of Charles Guidet, complainant, to the answer of the defendants. That repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

WILLIAM HILDRETH FIELD,
Complainant's Solicitor, 271 *Broadway, N. Y. City.*

To W. C. DE WITT, Esq.,
Def't's Solicitor.

(Endorsed:) Replication. Filed April 20th, 1874.

18 United States circuit court in and for the eastern district of New York.

CHARLES GUIDET
against
THE CITY OF BROOKLYN.

It is hereby mutually stipulated and consented that the answer of the defendants in this cause be amended as follows; that is to say:

First. By adding thereto and incorporating therein at the end of the eighth page of the said answer the following allegations, to wit:

And the defendant, further answering, says that the said stone pavement substantially which is described in and patented by the letters patent on which this suit is brought and prosecuted was prior to the time of any invention thereof by the said complainant known to and used by the following persons and in the following places; that is to say:

In the city of New York by Messrs. Gore & Smith (whose Christian names are unknown to the defendant, but who reside in the city of New York), which use is well known to John Stimpson, now residing in the city of Boston; in the city of New York, in Catharine street, by the Union Ferry Company, whose place of business is at the foot of Fulton street, in the city of Brooklyn, which use is well known to Cyrus P. Smith, now residing in the city of Brooklyn; and in the city of New York in the Bowery and on other streets, which use is known to Nathan Stephens and Brainard, both now residing in the city of Brooklyn.

In other places in the city of New York by parties unknown to the
defendant, knowledge of which use and parties so using the said
19 stone pavement is possessed by the complainant and by Pierson,
William Mogk, Nathan Stephens, Brainard, and John P.
Cranford, all now residing in the city of Brooklyn; H. Leland and John Smith, both now residing in the city of New York; and Jacob Stockinger, now residing in Elizabeth, in the State of New Jersey.

In the city of Boston, in the State of Massachusetts and vicinity, by Horace Beal (late of the city of Boston, but who is now deceased), and by David Gore, Stanley Gore, John Turner, James W. Kidney, Moses H. Libby, Benjamin F. Reeds, G. Turner, Daniel Kennedy, Horatio Samuel Payson, Cushing Main, Charles Harris, Sol. Trumbull, Parker, all now residing in the city of Boston, which use is well known to the said John Stimpson and the said David Gore and John Smith, and to all the above-named residents of Boston aforesaid. In the cities of Charlestown and Boston, and in the vicinity of the said cities, in the State of Massachusetts, by parties unknown to this defendant, but knowledge of which use and parties so using the said stone pavement, is possessed by the said John Stimpson, David Gore, John Turner, and the said above-named residents of the city of Boston.

In the city of Philadelphia, in the State of Pennsylvania, by parties unknown to this defendant, but knowledge of which use, and parties so using the said stone pavement, is possessed by John Booth and Charles S. Ferguson, both now residing in Jersey City, in the State of New Jersey, and by John McNamee, now residing in the city of Brooklyn, and by the following-named persons, all at present residents of the said city of Philadelphia, to wit: James Holgate, Mahton H. Dickinson, Conrad Andrews, Charles Barker, H. Barker, George Barcley, Thomas Birch, Edward Bradley, Joseph Cox, Michael Cunningham, W. P. Davies, Richard Dandson, Dennis Kennedy, Strickland Kneass, James R. McClure, David McNichols, Painter, Albert Simpson, D. Hudson Shedaker, Henry Simmons, and John Smithson.

Also in the city of Philadelphia aforesaid, by one Dupre, now
20 deceased, but lately of said city of Philadelphia, and also in the
city of Philadelphia, on Chestnut street, by Joseph Cox and John
Smithson, now residing in said city; also in the said city of Philadelphia, on Chestnut street and Delaware avenue, and other streets, by Daniel McNichol, now residing in said city.

Also in various streets of the said city by the several parties, residents of Philadelphia, above named.

In the city of Newark, in the State of New Jersey, by parties unknown to this defendant, but knowledge of which use, and parties so using the said stone pavement, is possessed by Charles S. Ferguson and John Booth aforesaid.

In the city of Brooklyn, in the State of New York, by John P. Cranford, now residing in the said city of Brooklyn, and by parties unknown to this defendant, but knowledge of which prior use is possessed by the said John P. Cranford, William Mogk, John McNamee, and Daniel O'Brien, all now residing in the city of Brooklyn, and John Stimpson, of the city of Boston. Also in the said city of Brooklyn, by Daniel O'Brien, now residing in the city of Brooklyn, and by the Brooklyn Railroad Company, a corporation now of the said city.

In the city of New Orleans, in the State of Louisiana, and elsewhere, by Nathan Stephens, now residing in the said city of Brooklyn, and by parties unknown to this defendant, but knowledge of which use, and parties so using the said stone pavement, is possessed by the said Nathan Stephens.

In the cities of Syracuse, Lockport, Troy, Albany, Buffalo, and Utica, in the State of New York, by James Finnegan, now residing in the city of Syracuse, and by parties unknown to this defendant, but knowledge of which use, and the parties so using it, is possessed by the said James Finnegan and the said John Smith, and also by J. R. Baxter and John Carton, both now residing in the said city of Syracuse, and also by the several residents of Rochester hereinafter named, and by Isaac Hollaway, now residing in the city of Buffalo, N. Y., and W. W. Whitmore, now residing in the city of Lockport, N. Y.

And this defendant, further answering, says that the
21 alleged invention, patented by said reissued patent issued to said
complainant, was prior to any invention thereof by him known and used in the city of Rochester, in the State of New York, in Exchange street, and in other streets in said city, which was known to George W. Beardslee, now residing in the city of Brooklyn, New York; Silas O. Smith, who formerly resided in said Rochester, and who is now deceased; E. F. Smith, now residing in said Rochester; William Churchill, now residing in said Rochester; and also to Martin Briggs, J. E. Pierrepont, Ambrose Crane, Benjamin Butler, W. S. Grant, John Quinn, Joseph Medway, and Tiffany Hunn, all now residing in the said city of Rochester, and W. W. Whitmore, residing in the city of Lockport, N. Y., and Isaac Bullury, now residing in Buffalo, N. Y.

And the defendant, further answering, says that the said stone pavement substantially which is described in and patented by the letters patent on which this suit is brought and prosecuted was, prior to the time of any invention thereof by the said complainant, used in and by the several cities of New York, Rochester, Brooklyn, Syracuse, Utica, Lockport, Troy, Albany, Buffalo, Boston, Charlestown, Providence, Newark, Philadelphia, and New Orleans, and the public authorities thereof respectively.

And this defendant, further answering, says that if the said complainant ever had any right to a patent for the invention aforesaid, he abandoned the same to the public, and forfeited all rights to the same by his own acts and laches, and that his patent therefor is, therefore, null and void.

And this defendant, further answering, says that the said invention was for more than two years prior to the application of said complainant for his said patent in public use, and on sale with his consent and allowance, and his said patent therefor is, therefore, null and void.

And the defendant, further answering, says that the same stone pavement, or substantially the same, was known to all the persons aforesaid prior to the time of the alleged invention thereof by the said complainant, and also that prior to the time of the said application 22 for the said letters patent, the said pavement was known to the complainant to have been used in various places in Europe, and particularly in the cities of Cologne, Brussels, Antwerp, and Rome.

And also that the said blocks of stone, composing the said pavement, have long prior to the said time been known to and made by the said William Grant in Aberdeen aforesaid, and afterwards at Fox Island, in the State of Maine, and Millstone Point, in the State of Connecticut.

And the defendant, further answering, says that the said stone pavement substantially, which is so described in and patented by the said letters patent on which this suit is brought and prosecuted, was also prior to the time of any invention thereof by the said complainant *is* used in the cities of Aberdeen and Glasgow and Edinburgh, in Scotland, in the Kingdom of Great Britain, by the said cities respectively, and by others unknown to this defendant, knowledge of which use and parties so using the said stone pavement is possessed by William Grant and Charles S. Ferguson, aforesaid, and by   Swain, now residing in the said city of Brooklyn, and by George Donaldson and John Fyfe, both now residing in Aberdeen aforesaid, and which use was, at the time of and before the application for the said letters patent, known to the said complainant; and the said stone pavement was also before the time of the complainant's alleged invention thereof in prior use in and by the city of London, England, and by divers persons unknown to this defendant, and in divers streets unknown to this defendant, but also and more particularly in Albany street, Regent's Park, Cheapside and Oxford street, all which use is known to the said Charles S. Ferguson, and to Samuel Danvers Taunton and Frederick A. Scholes, both now residing in the city of Brooklyn aforesaid, and which use was at the time of and before the application for the said letters patent known to the said complainant.

Isaac Hollaway, now residing in Buffalo, New York, as user, and as having knowledge of said pavement, and in Rochester and Buffalo; and W. W. Whitmore, now residing in Lockport, New York, as user, 23 and as having knowledge of said pavement in Lockport, and Rochester and Buffalo.

Second. By adding to the said original answer, and incorporating therein at the end of the seventh page of the said answer the following allegations, to wit:

"And also, in a certain other printed publication, that is to say, in the Encyclopœdia Brit*tan*'ica (published in Boston, in the year 1849), in volume XIX of the said work, under the title 'Roads,' which work, or a copy thereof, is contained in the Astor Library, in the city of New York. And also, in a certain other printed publication, that is to say, in 'Law's Treatise on Roads' (published in chapter six of the said   at page   .) And also, in a certain other printed publication, that is to say, in 'Appleton's American Cyclopœdia,' published in the city of New York, under the title 'Pavement.'"

And it is further stipulated and consented that the aforesaid amendments shall be made and take effect as of the day of the filing of the original answer herein, and that no further replication need be filed, and that all testimony heretofore taken herein, and all testimony which shall hereafter be taken herein shall be deemed and construed as taken after said amendments.

And it is further stipulated and consented that an order be made and entered herein, ex parte, to the effect aforesaid.

WILLIAM HILDRETH FIELD,
Complainant's Sol.
WILLIAM C. DE WITT,
Defendant's Sol.

(Endorsed:) Stipulation and consent as to amendments to answer. Filed June 30, 1874.

24 Circuit court of the United States for the eastern district of New York, in the second judicial circuit.

CHARLES GUIDET,
against
THE CITY OF BROOKLYN.
} In equity.

The answer of the defendant, The City of Brooklyn, to the bill of complaint of Charles Guidet, the complainant.

The defendant, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and imperfections in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as the defendant is advised is, or are, material or necessary for it to make answer unto, answering, says it is informed that, upon application by said Charles Guidet, letters patent of the United States were
25 granted and issued to the said Charles Guidet, on the 12th day of Januury, 1869, for an alleged improved stone pavement.

And the defendant says that it does not know, and is not informed, save by said bill of complaint, whether or not the said Charles Guidet did properly make application for said letters patent; or did comply with all the requirements of law; or did have said letters patent issued to him in due form of law, but the defendant leaves the complainant to make such proof thereof as he shall be advised is material, and require such proof to be made.

And the defendant, on information and belief, denies that, by virtue of any such letters patent or reissue as mentioned in the bill of complaint said complainant became or ever was possessed of or vested with any exclusive right to make, use, or lay down in the United States; or in the eastern district of New York, or elsewhere, the alleged stone pavement, patented by said letters patent.

And the defendant, further answering, says that it is informed, and believes it to be true, that the description of the alleged pavement as set forth in the specification annexed to said original and reissued letters patent is incomplete and ambiguous; and the said specification does not show the method of making or using the said alleged patented invention in such full, clear and exact terms as to enable any person skilled in the art or science to which it appertains, to wit, the art of constructing roads and pavements, to make and use the same.

And the defendant, further answering, denies that the said stone pavement so patented to the said Charles Guidet is of great or any utility or value, or that the same had been introduced into public use, or that the public generally, or any portion thereof, had acquiesced in or acknowledged the complainant's exclusive right to the same or

26 any portion thereof; but, on the contrary, says that the said pavement, so patented to said Guidet, is impracticable, and never has been used or laid by said patentee.

And the defendant, further answering, upon information and belief, denies that the said letters patent surrendered by said Charles Guidet were inoperative by reason of any defects or insufficiency in the specification which the said reissue did or was intended to remedy; but the defendant is informed, and believes, and therefore alleges, that said letters patent were surrendered, and specification of claim was amended with fraudulent and deceptive intention on the part of the said Charles Guidet, and that the said reissue is for different matter from that of the original patent, and embrace matter not in the drawing model of specification of said original patent, and is for matter not patentable, and that the claim of said reissue patent is a claim which was reject'd at the Patent Office upon the original application of said Guidet, and fraudulently inserted upon the reissue.

And the defendant, further answering, says that it is informed, and believes it to be true, that the same invention and discovery, and the same improvement in pavement and substantial and material parts thereof patented in and by the letters patent, as reissued and mentioned in the bill of complaint aforesaid, was patented on the 31st day of March, 1868, by letters patent No. 76227, granted and issued to Alexander Miller and C. Mason, who reside at Chicago, in the State of Illinois, and prior to the supposed invention and discovery thereof by Charles Guidet, the complaint aforesaid.

And the defendant, further answering, says that it is informed, and believes it to be true, that the said invention and discovery, and the same principle, and substantial and material parts thereof, patented in and by the letters patent, as reissued and mentioned in the bill
27 of complaint aforesaid, were and are mentioned and described in
a certain printed publication, that is to say, in the Repertory of Arts, Manufacture and Agriculture, volume 25, new series, published at London, England, in the year 1814, by John Wyatt, at the Repertory office, Hatton Garden, a publication published, issued and publicly circulated and distributed prior to the supposed invention and discovery by Charles Guidet, as aforesaid, the patentee of the said alleged invention, discovery, principle, the said description being on pages 77 to 81 of said publication, also, and in the following words, to wit: "Rudiments of the art of constructing and repaving common roads," published at London, England, in the year 1855, by John Weab, at 59 High Holborn, a publication published, issued and publicly circulated and distributed prior to the supposed invention and discovery by Charles Guidet as aforesaid, the patentee of the said alleged invention, the said description being upon pages 121 and 122 of said publication; and, also, in the printed specification and drawings of the following English letters patent, publication published, issued and publicly circulated and distributed prior to the supposed invention and discovery by Charles Guidet, as aforesaid, the patentee of said alleged invention, the said description being in:

Letters patent to James Homez, dated June 2, 1840, No. 8529.

Letters patent to Henry Ponkers, dated October 15, 1840, No. 8663.

Letters patent to David Stead, dated May 19, 1838, No. 7645.

Letters patent to Richard McNamara, dated March 15, 1837, No. 7324.

Letters patent to Charles P. Henry, dated June 22, 1866, No. 1663.

All of which were published by George Eyres & William Spottis-

woode, at Southampton Building, Holborn, England, and also in a cer-
tain other printed publication; that is to say, in the Encyclo-
28 pedia Brittanica, published in Boston, in the year 1849, in
volume XIX of the said work, under the title "Roads," which
work, or a copy thereof, is contained in the Astor Library, in the city
of New York.

And also in a certain other printed publication, that is to say, in "Law's Treatise on Roads," published in chapter six of the said work at page .

And also in a certain other printed publication, that is to say, in Appleton's American Cyclopedia, published in the city of New York, under the title "Pavement."

And the defendant, further answering, says that it is informed, and believes it to be true, that said Charles Guidet, patentee as aforesaid, was not the original and first inventor or discoverer of the said alleged invention and discovery, or of any material or substantial part of the thing, or of the improved stone pavement, patented in and by the letters patent, mentioned in the said bill of complaint, but that the same thing and the same stone pavement, substantially the same, had been previously in public use in South street, in the city of New York, laid by William Mogk, of the city of Brooklyn; in the Bowery, in the city of New York; by the city of Boston, at said Boston, in the State of Massachusetts; by the city of Philadelphia, at the said Philadelphia, in the State of Pennsylvania, prior to the time when it is alleged in the said bill of complaint the same was invented and discovered by said Charles Guidet, patentee as aforesaid.

And the defendant, further answering, says that the said stone pavement substantially which is described and patented by the letters patent on which this suit is brought and prosecuted was, prior to the time of any invention thereof by the said complainant, known to and used by the following persons and in the following places, that is to say:

In the city of New York by Messrs. Gore & Smith (whose Christian
names are unknown to the defendant but who resided in the city
29 of New York), which use is well known to John Stimpson, now
residing in the city of Boston.

In the city of New York, in Catharine street, by the Union Ferry Company, whose place of business is at the foot of Fulton street, in the city of Brooklyn, which use is well known to Cyrus P. Smith, now residing in the city of New York; in the Bowery and on other streets, which use is known to Nathan Stephens and Brainard, both now residing in the city of Brooklyn.

In other places in the city of New York by parties unknown to the defendant, knowledge of which use and parties so using the said stone pavement is possessed by the complainant and by Pierson, William Mogk, Nathan Stephens, Brainard, and John P. Cranford, all now residing in the city of Brooklyn; H. Leland and John Smith, now residing in the city of New York; and Jacob Stockinger, now residing in Elizabeth, in the State of New Jersey.

In the city of Boston, in the State of Massachusetts, and vicinity by Horace Beal (late of the city of Boston, but who is now deceased), and by David Gore, Stanley Gore, John Turner, James W. Ridney, Moses H. Libby, Benjamin F. Reed, G. Turner, Daniel Kenneday, Horatio Gore, Sam'l Payseer, Cushing Main, Charles Harris, Sol. Trumbull, Parker, all now residing in the city of Boston, which use is well known to the said John Stimpson and the said David Gore and John Smith, and to all the above-named residents of Boston aforesaid.

In the cities of Charlestown and Boston (and in the vicinity of the said cities), in the State of Massachusetts, by parties unknown to this defendant, but knowledge of which use and parties so using the said stone pavement is possessed by the said John Stimpson, David Gore, John Turner, and the said above-named residents of the city of Boston.

In the city of Philadelphia, the State of Pennsylvania, by par-
30 ties unknown to this defendant, but knowledge of which use and
parties so using the said stone pavement is possessed by John Booth and Charles S. Ferguson, both now residing in Jersey City, in the State of New Jersey; and by John McNamee, now residing in the city of Brooklyn; and by the following-named persons, all at present residents of the city of Philadelphia, to wit: James Holgate, Mahiton H. Dickenson, Conrad Andrews, Charles Barker, H. Barker, George Barcley, Thomas Birch, Edward Bradley, Joseph Cox, Michael Cunningham, W. P. Davies, Richard Davison, Dennis Kennedy, Strickland Kneass, James R. McClure, David McNichols, Painter, Albert Simpson, D. Hudson Shedaker, Henry Simmons, and John Smithson.

Also, in the city of Philadelphia aforesaid, by one Dupre, now deceased, but lately of said city of Philadelphia; and also in the city of Philadelphia, on Chestnut street, by Joseph Cox and John Smithson, now residing in said city; also, in the said city of Philadelphia, on Chestnut street and Delaware avenue and other streets by Daniel McNichol, now residing in said city; also on various streets of the said city by the several parties resident of Philadelphia above named.

In the city of Newark, in the State of New Jersey, by parties unknown to this defendant, but knowledge of which use and parties so using the said stone pavement is possessed by Charles S. Ferguson and John Booth aforesaid.

In the city of Brooklyn, in the State of New York, by John P. Crawford, now residing in the said city of Brooklyn, and parties unknown to this defendant, but knowledge of which prior use is possessed by the said John P. Crawford, William Mogk, John McNamee, and Daniel O'Brien, all now residing in the city of Brooklyn; and John Stimpson, of the city of Boston; also in the said city of Brooklyn by Daniel O'Brien, now residing in the city of Brooklyn; and by the Brooklyn
City Railroad Company, a corporation now of the said city. In
31 the city of New Orleans, in the State of Louisiana, and else-
where, by Nathan Stephens, now residing in the city of Brooklyn, and by parties unknown to this defendant, but knowledge of which use and parties so using the said stone pavement is possessed by the said Nathan Stephens. In the cities of Syracuse, Lockport, Troy, Albany, Buffalo, and Utica, in the State of New York, by James Finnegan, now residing in the city of Syracuse, and by parties unknown to this defendant, but knowledge of which use and the parties so using the said stone pavement is possessed by the said James Finnegan and the said John Smith; and also by J. R. Baxter and John Carton, both now residing in the city of Syracuse; and also by the several residents of Rochester hereinafter named; and Isaac Holloway, now residing in the city of Buffalo, New York, and W. W. Whitmore, now residing in the city of Lockport, New York.

And this defendant, further answering, says that the alleged invention, patented by said reissued patent issued to said complainant, was, prior to any invention thereof by him, known and used in the city of Rochester, in the State of New York, in Exchange street and in other streets in said city, which was known to George W. Beardslee, now residing in the city of Brooklyn, New York; Silas O. Smith, who formerly resided in said Rochester, and who is now deceased; E. F. Smith, now residing in said Rochester; William Churchill, now residing in said Rochester; and also to Martin Briggs, J. E. Pierrepont, Ambrose Crane, Benjamin Butler, W. S. Grantsyhm, John Quinn, Joseph Medburg, and Tiffany Hunn, all now residing in said city of Rochester; Isaac Halloway, now residing in Buffalo, New York; and W. W. Whitmore, now residing in the city of Lockport, New York.

And the defendant, further answering, says that the said stone pavement, substantially, which is described in and patented by the
32 letters patent on which this suit is brought and prosecuted, was,
prior to the time of any invention thereof by the said complainant, used in and by the several cities of New York, Rochester, Brooklyn, Syracuse, Utica, Lockport, Troy, Albany, Buffalo, Boston, Charlestown, Providence, Newark, Philadelphia, and New Orleans, and the public authorities thereof respectively.

And this defendant, further answering, says that if the said complainant ever had any right to a patent for the invention aforesaid, he abandoned the same to the public, and forfeited all right to the same by his own acts and laches, and that his patent therefor is therefore null and void.

And this defendant, further answering, says that two years prior to the application of said complainant for his said patent in public use, and on sale with his consent and allowance, and his said patent therefor is therefore null and void; and, the defendant, further answering, says that the same stone pavement, or substantially the same, was known to all the persons aforesaid prior to the time of the alleged invention thereof by the said complainant; and, also, that prior to the time of said application for the said letters patent the said pavement was known to the complainant to have been and used in various places in Europe, and particularly in the cities of Cologne, Brussels, Antwerp and Rome.

And, also, that the said blocks of stone composing the said pavement have long prior to the said time been known to and made by the said William Grant, in Aberdeen, aforesaid, and afterwards at Fox Island, in the State of Maine, and Millstone Point, in the State of Connecticut.

And the defendant, further answering, says that the said stone pavement, substantially, which is so described in and patented by the said letters patent on which this suit is brought and prosecuted, was also, prior
to the time of any invention thereof by the said complainant, in
33 use in the cities of Aberdeen, Glasgow, and Edingburgh, in Scotland, in the Kingdom of Great Britain, by the said cities, respectively, and by others unknown to this defendant, knowledge of which use, and parties so using the said stone pavement, is possessed by William Grant and Charles S. Ferguson, aforesaid, and by Swain, now residing in the said city of Brooklyn; and by George Donaldson and John Fyfe, both now residing in Aberdeen, aforesaid, and which use was, at the time of and before the application for the said letters patent, known to the said complainant; and the said stone pavement was, also, before the time of the complainant's alleged invention thereof, in prior use in and by the city of London, England, and by divers persons unknown to this defendant, and in divers streets unknown to this defendant; but, also, and more particularly in Albany street, Regent's Park, Cheapside, and Oxford street, all which use is known to the said Charles S. Ferguson, and Samuel Danvers Taunton and Frederick A. Scholes, both

now residing in the city of Brooklyn, aforesaid, and which use was, at the time of, and before the application for the said letters patent, known to the said complainant.

And that the same stone pavement, or substantially the same, was known to the following-named persons, to wit: John Stevens, of New York City, to have been in use in said Bowery, in the city of New York, and prior to the time when it is alleged in the bill of complaint aforesaid the same was invented and discovered by said Charles Guidet, patentee as aforesaid.

And that the same was in public use in the United States at cities of Boston and Philadelphia, by said cities, and had been in such use for more than two years before the 1st day of October, 1868, the date of the alleged application of Charles Guidet, patentee as aforesaid, for a patent therefor.

And the defendant, further answering, says that it is informed,
34 and believes it to be true, that the said invention and discovery,
and the same alleged improved stone pavement patented in and by the letters patent mentioned in the bill of complaint aforesaid, had been previously made and used publicly by said Charles Guidet, and thereafter, and as early as the 1st day of January, 1867, the same was, by the said Charles Guidet, abandoned to the public, and was, with the consent and allowance of the said Charles Guidet, and in public use in places where it has been laid by or with the consent of said Charles Guidet.

And the defendant, further answering, says that it does not know and is not informed, save by said bill of complaint, whether or not the said Charles Guidet instituted or prosecuted a suit in the United States circuit court for the district of New Jersey against one Samuel Barber for infringement of the said reissued letters patent, or that the judgment of the court was pronounced or that a decree was entered therein as stated in said bill of complaint; but it leaves the complainant to make such proof of said several allegations and statements as he shall be advised is material and requires such proof to be made.

And the defendant, further answering, says that the pavement which it has used and laid is very different in kind from the pavement described in the said letters patent mentioned in said bill of complaint and the specifications thereto annexed; and that it has not infringed, and still does not infringe, upon any rights and privileges alleged in said bill to be secured to the complainant by the said letters patent.

And the defendant, further answering, denies that it has ever contrived to injure said complainant, or to defraud him of any profits, benefits or advantages, whatever; and the defendant denies that it has at any time heretofore, laid, put down, or used, or is now laying, putting
down, or using, at the city of Brooklyn and eastern district of New
35 York, or elsewhere, any pavement manufactured in accordance
with the descriptions set forth in the aforesaid letters patent, and says that it has not in any way infringed, and does not in any way infringe, said patent. And it says that it has laid a stone pavement in Henry street, in said city of Brooklyn, but that said pavement is composed of blocks of stone, of rectangular shape, whose sides are all of an equal state of smoothness, and that the points of said blocks are not close at their narrow ends, nor are any of the edges champ'ered off so as to make the joints open at their broad sides.

And the defendant submits to this honorable court that all and every the matters in the said complainant's bill of complaint mentioned and complained of are matters which may be tried and determined by law, and with respect to which the said complainant is not entitled to any relief from a court of equity; and the defendant craves the same benefit of this defence as if it had demurred to said complainant's bill and prays that it may have the same advantage of its aforesaid answer as if it had pleaded the several matters and things aforesaid to the bill of complaint in this cause; without this, that any other matter, cause or thing in said complainant's bill of complaint contained material or necessary for the defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of the defendant.

All which matters and things the defendant is ready and willing to aver, maintain and prove as this honorable court shall direct; and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

THE CITY OF BROOKLYN,
W. C. DE WITT, *for Defendant.*

UNITED STATES OF AMERICA,
Eastern District of New York, City of Brooklyn,
County of King', ss:

John W. Hunter, being duly sworn, says that he is the mayor of the city of Brooklyn, the defendant named in the foregoing answer, subscribed by The City of Brooklyn; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge except as to the matter therein stated on information and belief, and as to those matters he believes it to be true.

J. W. HUNTER.

(Endorsed:) Amended answer. Filed July 1st, 1874.

36 At a circuit court of the United States of America, held in and for the eastern district of New York, on this first day of July, 1874.

Present, Hon. C. L. Benedict, judge.

CHARLES GUIDET
vs.
THE CITY OF BROOKLYN.

The defendants answer amended by adding thereto and incorporating therein the allegations set forth in the written stipulation and consent heretofore filed herein, having this day been duly filed in the office of the clerk of this court. Now, in accordance with the said stipulation and consent, and on motion of Mr. Knaebel of counsel for the defendant, it is ordered that the said answer as amended shall take effect as of the day of the filing of the original answer herein.

It is further ordered that no further replication need be filed.

37 It is further ordered that all testimony heretofore taken herein, and all testimony which shall hereafter be taken herein, shall be deemed and construed as taken after the said amendments.

Enter.

C. L. B.

(Endorsed:) Order on filing amended answer. Filed July 1st, 1874.

38 At a stated term of the circuit court of the United States o, America for the eastern district of New York, in the 2d circuitf

held at the court-house in the city of Brooklyn, on the 15th day of May, in the year of our Lord one thousand eight hundred and seventy-four.

Present, the Hon. Charles L. Benedict.

CHARLES GUIDET
agst.
THE CITY OF BROOKLYN.

Upon reading and filing the annexed consent, signed by solicitors for plaintiff and defendants, it is ordered that John A. Shields, esq., of Brooklyn, N. Y., be, and he is hereby, appointed special examiner herein, under the 67th rule as amended, to take the depositions of witnesses, as provided for in the annexed consent.

CHAS. L. BENEDICT.

U. S. circuit court.

CHARLES GUIDET
agst.
THE CITY OF BROOKLYN.

We hereby consent that John A. Shields, esq., of the city of Brooklyn, be appointed special examiner herein to take the depositions of the witnesses herein, upon condition that the order of appointment
39 provide that such commissioner shall sit only in the city of Brooklyn, unless otherwise consented to in writing or ordered on notice.

May 14th, 1874.

WILLIAM C. DE WITT,
Defendant's Solicitor.
WILLIAM HILDRETH FIELD,
Complainant's Solicitor.

Order.

United States circuit court, eastern district.

CHARLES GUIDET
agst.
CITY OF BROOKLYN.

Let the examination of witnesses on the part of the complainant take place before me, at the corporation counsel's office, city hall, in the city of Brooklyn, on the 26th day of May, 1874, at 11 o'clock, and proceed, &c.

May 18th, 1874.

JOHN A. SHIELDS,
Special Examiner.

United States circuit court, eastern district.

CHARLES GUIDET
against
CITY OF BROOKLYN.

SIR: You will please take notice the complainants in the above
40 cause desire the evidence to be adduced therein to be taken or-

ally, under the sixty-seventh rule of the Supreme Court, as amended; and you will further take notice that by an order made in said cause by John A. Shields, esq., special examiner therein, the examination of witnesses on the part of the said complainant will take place before said examiner, at the corporation counsel office, city hall, in the city of Brooklyn, on the 26th day of May, 1874, at 11 o'clock, and proceed as the said examiner may direct.

Yours, etc.

WILLIAM HILDRETH FIELD,
Solicitor for Complainant.

May 18th, 1874.

To WILLIAM C. DE WITT, Esq.,
Solicitor of Defendant.

United States district court, eastern district of New York.

CHARLES GUIDET
vs.
THE CITY OF BROOKLYN. } In equity.

Before John A. Shields, examiner.

Testimony of witness on behalf of complainant, taken pursuant to rule 67 of the Supreme Court in equity, as amended.

BROOKLYN, *May* 26, 1874—11 a. m.

Present, on behalf of plaintiff, Mr. Field and Mr. Harding, and Mr. De Witt for defendant.

41 Mr. Harding gives in evidence certified copy reissue letters patent issued to Charles Guidet, dated August 23, 1870, No. 4106, marked "Exhibit Reissue 4106, J. A. S., ex'r."

J. BOYD ELIOT, a witness on behalf of plaintiff, being duly sworn, says, in answer to interrogatories propounded to him, as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is J. Boyd Eliot; age 46; residence, New York City, and occupation mechanical engineer and solicitor of patents; and for the past twenty years have been much occupied in testifying as an expert in patent causes.

Q. 2. Have you had any experience as an expert specially in reference to pavements?

A. I have frequently had occasion to examine patents for pavements, and to examine their construction during the time that they were being laid; I have solicited a great many patents for pavements, and have often testified as an expert before the United States courts in cases in which patents for pavements were involved.

Q. 3. Have you read and do you understand letters patent issued to Charles Guidet, Exhibit Reissue 4106?

A. I have read said letters patent and do understand the same.

Q. 4. Have you examined stone pavement recently laid and now in use in the city of Brooklyn, at the request of plaintiff; and, if so, when and where?

A. At the request of Mr. Field, counsel for complainants, I came over to the city of Brooklyn on the 8th day of January, 1874, and examined a stone pavement laid on Atlantic avenue from the intersection of Henry street with said avenue to about the intersection of Bond street and said avenue; I also examined stone pavement on Lafayette avenue from where it intersects Flatbush avenue out past Elliot place as far as Oxford street; thence I went to Myrtle avenue at the intersection of Cumberland street, and examined the stone pavement thereon down to where Myrtle avenue joins Fulton street.

Q. 5. Please state whether or not you found in said pavements
42 so examined by you the invention described and claimed in said
reissued letters patent 4106, and give your reasons for any opinion you may express.

(Objected to as opinionated, incompetent, and irrelevant.)

A. I did find in all said pavements so examined by me substantially the invention described and claimed in said letters patent 4106, and for the following reasons: In all of said streets, so far as I have examined them, and to which I have already made reference in a previous answer, I found pavements composed of stone blocks made in the form of parallelopipeds or prisms, whose sides are parallelograms, said blocks or prisms having their narrow edges or sides made sufficiently smooth as that they could be laid closely together so as to form close joints parallel with the sides of the street, or in the direction with the line of travel, substantially as set forth in said patent. Second, I also found in said pavements that the broad sides of said blocks or parallelopipeds were "left rugged" or rough, or purposely cut so, and selected and so laid as to produce open transverse joints across the streets, so as to form open spaces for a foothold to the draught animals, substantially as set forth and claimed in said letters patent. The manner in which these several blocks were placed together, having their sides abutted, without the intervention of material between them, so as to junction with it, formed a pavement which possessed all the functions and firmly retain them in position, each block assisting the others in con- advantages described and claimed in said reissued patent; and for these reasons I regard said pavements the same in principle as the pavement described and claimed in said patent. I make this statement in reference to the pavements referred to in my answer to the last question, and which I examined thoroughly.

JOHN BOYD ELIOT.

Adjourned to June 5, 1874, at 11, a. m.

43 BROOKLYN, *June* 5, 1874—11 a. m.

Present, counsel as before.

Cross-examination of JOHN B. ELIOT:

X Q. 6. As I understood you, Mr. Eliot, the pavement of the streets which you visited are already laid and completed?

A. It was, so far as I referred to in my answer on that point; I mean on Atlantic avenue, from Henry street to Bond; on Flatbush avenue, to Oxford street; on Lafayette avenue; and from Cumberland street down to Fulton street on Myrtle avenue.

X Q. 7. Those boundaries include all the pavement of which you speak, in regard to this pavement?

A. They do.

X Q. 8. Was not the pavement already laid and completed on the streets—what you speak of in your direct examination?

A. It was completed when I saw it.

X Q. 9. Did you take or see taken from the bed of any of these streets any of the stone blocks, or a block?

A. I did not at that time.

(Objected to as not responsive.)

X Q. 10. Have you ever seen any particular block or blocks which you know to have heretofore been, or now to be, a part of the pavement of either of those streets, except as laid upon the streets?

A. I have several times; I saw the stone blocks piled up on the sidewalk on portions of the streets to which I have referred, prior to their being laid; and then, since the taking of the testimony on the 26th of last month I have seen blocks lifted from portions of said pavement where they were making some repairs.

44 X Q. 11. What do you understand as the correct definition of the word "smooth"?

A. In a general sense it is that which is such a surface that all portions of it will lie in the same plane, provided the surface is a plane surface, or all points shall coincide with the same straight line that subtends or connects any two points on a curved or irregular surface.

X Q. 12. Does it not imply perfect evenness of surface, so as to render the passing of another object over the surface easy and without interruption?

A. It may so imply, but it need not necessarily be limited to a perfect smooth surface, as that is very difficult to obtain.

X Q. 13. Does it not include the idea of finish or gloss?

A. Not necessarily so.

X Q. 14. Will you please state the difference between a smooth and a rough stone?

A. That would depend upon for what purpose it is to be used; as, for example, stones for pavements may have what would be very properly termed smooth surfaces, when they would be considered very rough for diamonds, or for settings in mosaic work.

X Q. 15. Please state your definition of the word "rough" in its application to stones for pavements.

A. If a pavement is to be formed as described and claimed in the Guidet patent, then they must be left sufficiently rough on their sides so as to form open joints across the streets of sufficient distance so as to form a sufficient foothold for the draught animals travelling thereon.

(Objected to by defendant as irresponsive.)

X Q. 16. My last question was general, and put to obtain a general answer; for that purpose I repeat it.

A. From what I have already stated concerning the use of the
45 words rough and smooth, it would be impossible to give any definition of either of said terms, unless some specific kind of pavement is included in the question; and it was for this reason that I made my last previous answer as I did. Cobble stones are rough stones for pavements, although their surfaces may be, and often are, generally smoother than the stones that are dressed for such purposes; and therefore it is very evident that the terms smooth and rough must be considered comparatively with each other.

X Q. 17. Can you give no general definition to the term rough in its particular application to stones for pavements of which you have been speaking?

A. In a previous answer I have already defined what I regarded as a proper degree of roughness for a pavement such as the question is now limited to, namely, the one of which I have "been speaking," and which I termed in said answer the Guidet pavement.

X Q. 18. Can the words smooth and rough be made to have a different meaning in its application to the different sides of the same stone among these pavements, in your judgment?

A. It can, and, if properly laid, always does.

(Last part of answer objected to as irresponsive.)

X Q. 19. Please look at the block upon the table, and state whether the narrow ends thereof are rough or smooth, in your judgment.

A. For a paving stone one end of said block is sufficiently smooth to form a good pavement, that is, to make a close joint in the line of travel; the other end would require the use of the clip-hammer, unless the corresponding stone against which it is to be laid were somewhat concave, so as correspond with the convex end of said stone, otherwise there would be an open joint in the direction of the line of
travel. If the question means to ask whether they are absolutely
46 smooth or rough, I can answer that they are neither, or that
they are either, for, as already stated by me, the words have
to be used in a comparative sense.

(Objected to as irresponsive.)

(Stone offered in evidence, marked "Defendant's Exhibit Big Stone No. 1' J. A. S., Ex'r.")

X Q. 20. Are the short, narrow sides of that stone "Ex. Big Stone No. 1" rough or smooth?

A. That will depend upon for what purpose it is intended to be used. If for a paving stone (counsel for defendant says, "That is all I want;" witness says, "That is not all I want"), then I have already, in a previous answer, stated my definition of them.

X Q. 21. Same question repeated.

A. Unless the question be limited to the purpose for which said stone is intended to be used, it is impossible to give any other answer than what I have given.

(Objected to as not responsive.)

X Q. 22. In your testimony in this case have you regarded the terms smooth and rough as terms of merely relative and not absolute terms of signification? Please answer this question directly.

A. I have.

X Q. 22½. Look at "Exhibit Big Stone No. 1," and say which are the rougher, the broad sides or the short narrow sides, generally.

A. One of the short sides in said exhibit is probably smoother than either the other or the broad sides. The other short side is rougher, or would make a more open joint in a pavement than the smoothest of the broad sides, but not more so than the opposite broad side of said exhibit.

(Another stone offered in evidence, marked "Defendant's Exhibit
Big Stone No. 2, J. A. S., Ex'r.")
47 X Q. 23. Look at stone now shown you, marked "Defendant's
Exhibit Big Stone No. 2." Under your relative definition of
the terms rough and smooth, can you state directly or categorically whether the short, narrow side of that stone, marked "R," is rough or smooth; if so, please state?

A. It is rough.

X Q. 24. As to the other short, narrow side of the same stone (I mean to attach to this question the same conditions attached to the last question), is it rough or smooth under your standard?

A. Smooth.

Witness recalled by Mr. HARDING.

Q. 25 Since your examination-in-chief have you examined any other pavement in Brooklyn in the course of construction? If so, state where and when you examined it.

(Objected to as irrelevant and immaterial.)

A. On the afternoon of the day when I first gave my testimony in this case I went over the same portions of the pavements in the several streets to which I have referred, and I also continued my examination in Lafayette avenue from Oxford street out to Bedford avenue, and I also examined Myrtle avenue from Broadway down to its junction with Fulton street, and I saw men at work laying a pavement on Myrtle avenue within about three squares probably of Broadway, or out towards the eastern end.

Q. 26. Was the pavement which you saw them in the act of laying similar to the pavement you have heretofore testified to?

A. It was substantially the same in every respect.

Q. 27. In the laying of the pavement so seen by you was the invention of the pavement of the Guidet patent, as claimed therein, contained, and give your reasons?

(Objected to as opinionative and incompetent.)

48 A. In my opinion it was, and for the same reasons that I gave concerning the other portions of the pavements to which I have referred in my answer to question No. 5.

Q. 28. Was the mode of laying said pavement explained to you at the time of your said visit by any one engaged in the laying of such pavement; and, if so, what was such explanation?

(Objected to as irrelevant and incompetent.)

A. It was explained to me in answer to certain questions that I put to men whom I found to be inspectors of the work. As I came to the eastern end of Myrtle avenue, where it intersects Broadway, I examined the grading preparatory to laying the pavement, and also the blocks of stone that were to be used for such purposes, and finally came on to where a gang of men were engaged in laying a pavement between the car-tracks, and as I approached the party I heard a man, who was overlooking the work apparently, finding fault with one of the men for not laying the stones closer together at their ends, and he lifted the stone from its place and used the clip-hammer on the end, so as to smooth it or so shape it as to form a closer joint. He also objected to their not keeping their stones in line transversely to the line of travel, and I remarked to this man that I supposed it was more difficult to lay the stones closer together on their sides than at their ends. He replied that they did not wish them laid close together on their sides, as they wished to give foot-hold to the horses, and then he pointed out some stones that were laid too close together, but complained that this lot of stone was not very good for this purpose, and that they must get along with it the best way they could. He then referred me to a place where the transverse joints were about what they desired to have them, and where I found that the transverse openings were about an inch on the top from the corner of one stone to the other. I did not ask him his name, but asked him if he had charge of the work, and he replied that he was one of the inspectors on the part of the city to see that the work was properly done as contracted. I
then visited another inspector, who was superintending the men
49 who were doing the second ramming of the pavement; and on making similar observations in the presence of this man in reference to laying the stone closer together at their ends, and with open joints across the streets, he made a similar reply to what the first one did, that that was the way they desired to have them in order to give foot-

hold to the horses. I asked one of the men if the person to whom I had been talking was an inspector, and he said he was.

(Defendant's counsel objects to and moves to strike out all and each part of the foregoing answer, as matter occurring long subsequent to the issues and pleadings in this case, as irrelevant, hearsay, and incompetent, and upon these grounds specifically as well as generally.)

Cross-examination:

X Q. 29. All the matters testified to in your last answer, I understand, occurred on May 26, 1874?

A. Yes.

X Q. 30. And your answers to the questions put to you by me on your former cross-examination are equally applicable to all the matters testified to by you in your last answer?

A. They are.

X Q. 31. Have you been retained professionally by complainant in this action, or compensated, or promised compensation for services herein?

A. I have been employed as an expert, and paid my usual compensation as an expert.

JOHN BOYD ELIOT.

Subscribed and sworn to before me June 5, 1874.

JOHN A. SHIELDS,
Examiner.

Mr. Harding gives in evidence the specification issued by the city of Brooklyn, which is embodied in the contract, under which contract the Myrtle avenue pavement between Fulton street and Broadway was laid.

Marked "Complainant's Exhibit Contract Specification, J. A. S., Ex'r."

Complainant rests.

50 United States circuit court, eastern district of New York.

CHARLES GUIDET
agst.
THE CITY OF BROOKLYN.

I hereby appoint the further examination of witnesses for the defendant to take place before me, at the office of the counsel to the corporation of the city of Brooklyn, on the 13th day of February, 1875, at twelve noon.

JOHN A. SHIELDS,
Special Examiner.

February 5th, 1875.

United States circuit court, eastern district of New York.

CHARLES GUIDET
agst.
THE CITY OF BROOKLYN.

I hereby appoint the further examination of witnesses for the defendant to take place before me, at the office of the counsel of the corporation of the city of Brooklyn, on the sixth (6) day of March, 1875, at twelve noon.

JOHN A. SHIELDS,
Special Examiner.

Dated February 26, 1875.

51 United States circuit court, eastern district of New York.

CHARLES GUIDET
agst.
THE CITY OF BROOKLYN. } In equity.

SIR: Please take notice that witnesses will be examined and testimony taken on behalf of the plaintiff in the above-entitled suit before John A. Shields, esq., special examiner in this suit, at the office of George Harding, esq., No. 18 Vesey street, New York City, on the 18th day of October, 1875, at 12 o'clock noon, and will continue from day to day, pursuant to adjournments.

Yours, etc.,

WILLIAM HILDRETH FIELD,
Plaintiff's Solicitor.

Dated New York, October 4, 1875.

To WM. C. DE WITT, Esq.,
Defendant's Solicitor.

Circuit court of the United States for the eastern district of New York

CHARLES GUIDET
vs.
THE CITY OF BROOKLYN. } In equity.

52 Testimony taken on behalf of complainant for a final hearing under rule 67 of the Supreme Court of the United States, in equity, as amended, before John A. Shields, esq., examiner, etc.

NEW YORK, *October* 18, 1875—12 m.

Present, George Harding, esq., and William H. Field, esq., of counsel for complainant, and William C. Witter, esq., for defendant.

ALEXANDER F. DODGE, a witness called on behalf of complainant, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Alexander F. Dodge; age, fifty-five; residence, Brooklyn, N. Y.; and occupation, city surveyor.

Q. 2. Were you contract clerk of the Croton Aqueduct department, in the city of New York; and, if so, when?

A. I was contract clerk in the Croton Aqueduct department from July, 1849, until the spring of 1870.

Q. 3. What were the duties of the Croton Aqueduct board in the city of New York from 1857 down to 1870, by statute?

A. Among their duties were the construction of sewers and the construction of pavements; the duty of constructing pavements was from 1857 down to the time it was merged in the board of public works, in the spring of 1870.

Q. 4. What were your duties as contract clerk to that board?

A. Among my duties were the preparation of specifications for contracts for sewers and pavements, and all other matters connected with those things.

Q. 5. Do you remember the laying of the pavement on South street between Oliver and Market streets, in the city of New York, while you were such clerk?

A. I do.

53 Q. 6. How many pavements were laid on South street between Oliver and Market streets while you were contract clerk?

A. One only.

Q. 7. Do you know who suggested the laying of the form of stones used in that pavement?

A. Mr. Charles Guidet, here present, was the only gentleman who ever suggested that kind of stone.

Q. 8. How came you to know that he suggested it?

A. From conversations with him prior to that time of laying that pavement.

Q. 9. Were the stones furnished ready prepared for laying that pavement; and, if so, by whom were they furnished?

A. Those stones were furnished by Mr. Guidet, ready prepared for laying.

Q. 10. State whether or not this pavement was regarded as being an experiment at the time it was laid.

(Objected to as incompetent.)

A. It was certainly considered an experiment, so far as shape of stone was concerned.

Q. 11. How long does it require to test the merits of a stone pavement to determine whether it would be proper to adopt generally?

A. Not less than three or four years.

Q. 12. Do you know why South street, at this place, was selected for this experiment?

A. South street was selected on account of its being a street on which there was very heavy travel.

Q. 13. When and where was the next pavement of this kind laid in the city of New York, and by whom?

A. The next pavement of similar character was laid in Broadway, five or six years ago, from Bowling Green to 14th street, by Mr. Charles Guidet.

54 Cross-examined by Mr. WITTER:

X Q. 14. Describe in all respects the stones that were used in laying the pavement on South street between Oliver and Market, to which you have referred.

A. The stones used in South street were parallelopiped blocks, say from ten to twelve inches in length, three inches to four inches in width, and seven to nine inches in depth.

X Q. 15. Did the same stone vary much in depth, or was this variation of seven to nine inches the varying depth of different stones?

A. Each stone was intended to be nearly uniform in its dimensions. Different stones might vary in depth.

X Q. 16. Do you mean to be understood, when you say that "the stones used in South street were * * * * seven to nine inches in depth," that different stones varied in depth from about seven to nine inches; that is to say, that some stones had a more or less greater depth than others?

A. I won't say that they varied from seven to nine inches in depth; their general average was more than that; there was nothing so small as seven.

X Q. 17. According to your best judgment, what was the depth of the deepest of the stones and what the depth of the least deep?

A. The depth of the deepest of the stones—nine inches, I should judge, would be the average depth of the stones. I saw the stones when they were being delivered, piled up on South street.

X Q. 18. I did not intend to ask you for the average depth, but the extremes of depth; please answer that.

A. Ten inches, as nearly as I recollect, was the deepest allowed.

X Q. 19. And what was the least depth of those stones?

A. I think about eight inches.

55 X Q. 20. Then you mean to be understood, do you, that there were some stones ten inches or thereabouts in depth, and ranging from that to eight inches or thereabouts in depth, the whole constituting an average of about nine inches?

A. I mean that.

X Q. 21. And when you say, in answer to question 14, "that the stones used in South street were * * from ten to twelve inches in length," do you mean that some of the stones were twelve inches in length and some of them ten inches in length, and that the average would be eleven inches or thereabouts in length?

A. I do.

X Q. 22. And when you say, in answer to question 14, "that the stones used in South street were * * three inches to four inches in width," do you mean that some of the stones were three inches in width and some of them four inches in width, and that the average would be three and one-half inches or thereabouts in width?

A. I do.

X Q. 23. When was this pavement in South street of which you have spoken laid?

A. Either in the year of 1864 or 1865; but I think it must have been in the year 1865.

X Q. 24. Was it all laid at one time?

A. The whole of the stone to which reference has been made was laid at one time. It was one contract, and it was only laid between those streets.

X Q. 25. State what method was pursued in the laying of these stones which differed in any manner from the method of laying the pavement known as the Belgian pavement.

A. I don't recollect that any different method was pursued; in this case a special contract was made for laying this stone; in the
56 case of the Belgian pavement the contractors furnish the stone,
and in this case the board furnished the stone.

X Q. 26. How were these blocks laid with reference to each other?

A. Lengthwise across the street.

X Q. 27. How closely together were they laid?

A. So close as to touch one another.

X Q. 28. Did they touch one another both on the sides and on the ends?

A. They did.

X Q. 29. Did the sides of the stones touch one another over their entire surface?

A. They did, except where the roughness prevented; they were placed to adjoin one another.

X Q. 30. Then you mean that they touched one another on the sides at the rough projections thereon; is that it?

A. That is what I mean to say. The blocks were placed in as close proximity as their unavoidable roughness permitted.

X Q. 31. And was this feature likewise true of the ends of the stones, namely, that they touched each other only at the rough projections thereon?

A. It was.

X Q. 32. State whether or not these blocks were chamfered upon the upper edges thereof.

A. They were not chamfered on the upper edges.

X Q. 33. State about how closely the stones were laid together; that is to say, how closely the projections on the sides and on the ends permitted them to be laid.

A. I should say there would be a space of half an inch when the blocks were laid as closely as they could be.

X Q. 34. Half an inch where?

57 A. At the surface between the blocks.

X Q. 35. At the surface between the blocks at the sides and ends do you mean?

A. I mean both sides and ends. Without the blocks were polished it would be impossible to bring them close together.

X Q. 36. You say that "there would be a space of half an inch when the blocks were laid as closely as they could be;" what was the distance apart of the blocks at the sides and ends when they were not laid as closely as they could be?

A. I could not answer that last question exactly; but the blocks came together so closely as to touch at projecting points, but not so as to make a tight joint.

X Q. 37. Then the width of the joints at the sides and at the ends was half an inch or thereabouts, was it?

A. Thereabouts, yes.

X Q. 38. What was the material of which these blocks were made?

A. It is called granite.

X Q. 39. Is that pavement still upon the street where laid?

A. On South street it is; to the best of my knowledge it has never been disturbed.

X Q. 40. When did you last see that pavement in South street?

A. I think I crossed it within the last month.

X Q. 41. Which corners became worn off the quickest by the travel on the street, the upper corners of the sides or the upper corners of the ends of the blocks?

A. I have never looked at it with reference to that point.

X Q. 42. They both wear off and become more or less rounding, do they not?

58 A. Yes; they become rounded more or less.

X Q. 43. What, if anything, was used or put between the blocks at the sides and at the ends?

A. Nothing; after the pavement was laid sand was put on top, which worked in between the blocks; there was no strip of wood or anything of that kind placed between the blocks; that was done with the Nicholson.

X Q. 44. By the sand which you say "worked in" you mean worked in between the blocks at the side and end joints, do you not?

A. That is what I mean, so far as the joint would admit of the sand working in.

X Q. 45. Did the joints at the sides and ends admit of the sand working in?

A. To some extent it would.

X Q. 46. What was the object of having the stones half an inch, or thereabouts, apart at the sides and at the ends, as you have said?

A. It was unavoidable having the half-inch joint; it would, of course, be a benefit having the transverse joints a half an inch apart, so as to afford a better foothold.

X Q. 47. What was the advantage of having the end joints the same distance apart as the side joints, if any?

A. There would be no especial advantage in having the end joints apart.

X Q. 48. Was that also unavoidable, by reason of the rough ends?

A. It was unavoidable, so far as any joints existed at the ends.

X Q. 49. Haven't you said that the joints at the ends were half an inch or thereabouts in width, in answer to cross-question 37? If yea, state what that width of joint was caused by.

59 A. By the unavoidable roughness of the blocks.

X Q. 50. Didn't just as much sand work in to the end joint as there did into the same length of joint on the side, substantially?

A. Whatever sand would work in would be in proportion to the space; it depends on the size of the space.

X Q. 51. Supposing the end joint to be four inches long, would there not, in your opinion, as much sand work into this end joint as there would into four inches in length of the side joint; I mean substantially and generally speaking?

A. If the roughness of the ends and sides were alike then the quantity would be the same.

X Q. 52. But if the joints at the sides and ends were alike, half an inch or thereabouts in width, the roughness of the ends and sides must have been substantially alike, must they not?

A. Well, I think they must have been; if the roughness were alike, I think they would correspond; the blocks were laid to break joints.

X Q. 53. Must not the roughness have been substantially alike in amount of projection in order to have the joints at the sides and ends alike—half an inch in width, or thereabouts?

A. Undoubtedly it would; when I speak of breaking joints I mean breaking joints longitudinally.

X Q. 54. When you say longitudinally you mean longitudinally with the street?

A. I do.

X Q. 55. Do you know the names of any of the workmen who worked at laying that pavement in South street?

60 A. I don't know the names of any of the workmen; I think the pavement was laid by Christopher Keyes.

ALEX. F. DODGE.

No redirect by Mr. Harding.

Subscribed and sworn to before me this 18th day of October, 1875.

JOHN A. SHIELDS,
Examiner, &c.

Adjourned to Tuesday, October 26, 1875, at 12 o'clock noon, at same place.

New York, *October* 26, 1875—12 m.

Present, Mr. Harding and Mr. Field, of counsel for complainant, and Mr. Witter for defendant.

AARON B. ROLLINS, a witness called on behalf of complainant, being duly sworn, testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Aaron B. Rollins; age, 54; residence, New York City; and in 1865 I was water purveyor to the Croton Aqueduct board; I held that position from 1859 to 1866; I was coroner for three years.

Q. 2. Do you remember the circumstance of laying the pavement in South street between Market and Oliver streets during the time that you were water purveyor; I mean the pavement that is now on that street?

A. Yes, sir.

Q. 3. Had you anything to do with the laying of that pavement; if so, what?

A. Superintending it.

61 Q. 4. Do you know who furnished the blocks for the laying of that pavement, and who suggested the manner of laying it?

A. Yes, sir; Mr. Charles Guidet.

Q. 5. Do you know whether it was regarded as an experiment at the time it was laid?

(Objected to as leading.)

A. Yes, sir; it was.

A. B. ROLLINS.

Cross-examination waived.

Subscribed and sworn to before me this 26th day of October, 1875.

JOHN A. SHIELDS,
Examiner, &c.

STEWART J. FAY, a witness called on behalf of complainant, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Stewart J. Fay; age, 45; residence, Brooklyn City, N. Y.; occupation, foreman or superintendent for contractors for public works in Brooklyn.

Q. 2. What connection have you had with the laying of the pavement on Atlantic, Myrtle, and Lafayette avenues, and on Henry street, in the city of Brooklyn; I mean the pavements that were laid on those streets in the years 1873 or 1874?

A. I was clerk and foreman on the dock for the contractor in 1873 on Myrtle avenue, and I was in the same position for Mr. Guidet in 1870 or 1871 on Atlantic avenue. I was clerk and foreman on the dock for the contractor who laid the pavement on Atlantic avenue from Flatbush avenue to Classon avenue.

62 Q. 3. Confining your attention, then, to the pavement which was laid in 1873 or 1874, and which you have stated you were connected with, please state what your duties were in reference thereto.

A. I was to see the stone discharged on the dock from the vessels; that they were counted, rejected, or accepted by the contractor. Those that were bad were culled out and put one side.

Q. 4. In selecting these stones and culling those which were bad, what ones did you cull out; and state how you were guided in making your selection?

(Any testimony upon the subject of infringement, or which tends to show in any particular the character of the infringement, is objected to, and defendant's counsel gives notice that if any testimony of that character is taken he shall consider the case fully reopened for the defense.)

A. I culled those that were too small, according to the specifications, those that were illy or badly formed, those not deep enough, and those with large projections on the ends. I was guided solely in doing this by my knowledge of how they ought to be put down on the streets and seeing the pavement before, and the orders of the contractor, too.

Q. 5. Explain to me why you rejected those that had too large projections on the ends, and state also how the projections on the ends of the stones accepted compared with those on the sides.

(Objection continued.)

A. Simply that it prevented making a good joint on the ends, a large projection making too large a joint on the ends; and I also admitted those having a larger projection on the sides, because it was necessary to have a wider joint there.

Q. 6. Can you give me an idea of the number of stones which would be rejected at times on account of bad shape, in a thousand, say?

63 A. I objected at times to two or three per cent., five per cent., and ten per cent., and at one time I rejected two thousand blocks out of a lot of twelve thousand.

Cross-examined by Mr. WITTER:

X Q. 7. How came you to make this selection in culling that you have testified to on your direct examination?

A. By order of the contractor.

X Q. 8. What was his name?

A. Edward Freel, of Freel & McNamee; both of them gave me such directions.

X Q. 9. Where was your occupation conducted?

A. In the early part I was at the foot of Gold street; after that I was at the Wallabout Canal, Pier 1, and part of the time at the foot of Pearl, all in Brooklyn.

X Q. 10. Were you occupied there all the time at one or the other of those places?

A. I might say all the time, with the exception of five or six days when there were no vessels in.

X Q. 11. The localities were where the vessels unloaded, were they not?

A. Yes, sir.

X Q. 12. Did any other contractor ever give you these instructions?

A. Yes, sir.

X Q. 13. Who?

A. Mr. Guidet.

X Q. 14. When was that, and where?

A. That was in 1870 or 1871; I am not certain of the time; Mr. Guidet gave me those instructions when I was on the Wallabout also.

X Q. 15. Who was the first man who ever gave you those instructions?

64 A. I think it was Mr. Guidet himself.

X Q. 16. At about the time you mention?

A. Yes, sir.

X Q. 17. How high would a projection on the end have to be to cause you to reject the stone under the instructions of Freel & McNamee?

A. I wouldn't like to pass a block with more than a quarter of an inch projection on the end.

X Q. 18. What were these contractors' instructions to you in that respect?

A. Not to pass anything that would prevent both stones coming together and forming a good joint on the ends.

X Q. 19. How wide may the joint be at the ends, and yet be a good joint, under those instructions?

A. Any width would be too much.

X Q. 20. How wide might they be on the sides, under those instructions?

A. I wouldn't reject a block that was less than three-quarters of an inch; I would pass it.

X Q. 21. Do you mean that if the projections on the sides were greater than three-quarters of an inch you would reject the stone?

A. I wish to explain; I mean that if there was an inch of projection on every stone I would reject it; that would make two inches of a joint, which would be *two* wide; but I would admit one or two stones with an inch projection, for the reason that the paver could work them in, as there are some concave stones.

X Q. 22. One or two in how many, according to your judgment?

A. Well, if my men showed me one or two stones with this size of projection, I might admit them; if they came crowding on too fast I would reject them.

65 X Q. 23. What, according to your recollection, were the largest projections upon the sides of stones which you passed under the contractors Freel & McNamee?

A. Well, to the best of my recollection, it would be about an inch.

X Q. 24. And what the smallest projection?

A. That, sir, involves another explanation; if all the stones were clean cut on the side they would not pass; that would make as close a joint as would be on the ends; but I never saw any without projections on except they were dressed down to that.

X Q. 25. Dressed down for what purpose?

A. For exhibition.

X Q. 26. What, according to your recollection, were the smallest projections upon the sides of the stones which you passed under the contractors Freel & McNamee, and which projections were at the same time the largest on the side of the block?

A. Well, I have seen granite blocks that broke nearly clean, but I never saw one that was without a quarter of an inch of projection on the surface of the sides, according to the best of my recollection.

X Q. 27. Did you lay any of this pavement yourself?

A. A small quantity.

X Q. 28. Where and when?

A. On Atlantic avenue and Myrtle avenue, at each of those times that I spoke of as being at work for Mr. Guidet and Freel & McNamee.

X Q. 29. In selecting these stones, as you have testified, what attention did you pay to the bottom surface, which rested on the bed of the street?

A. Just as much as to the top or the side surface.

X Q. 30. Did you receive directions to do so from Freel & McNamee?

66 A. Yes, sir.

X Q. 31. Will you now state in your next answer all the directions which Freel or McNamee gave you with reference to the selection of these stones, repeating in your answer such directions as you have already stated were given by them?

A. I might say here that neither Mr. Freel nor Mr. McNamee were experts at this business of selecting stones, but I was recommended to them. Their instructions to me were that I should send up well-formed blocks and the smallest of that size that would cover fifty square inches of surface; that they should be well formed at the bottom also, so that they would lay on the bed of the road solid. They might have given me other instructions which I don't call to mind.

X Q. 32. Which were the bottoms of the stones, in your judgment, most like in smoothness, the ends or the sides—I mean those stones which you selected under Freel & McNamee's instructions?

A. The ends decidedly, because the smaller the surface of the piece broken the smoother it is.

STEWART J. FAY.

Subscribed and sworn to before me this 26th day of October, 1875.

JOHN A. SHIELDS,
Examiner, &c.

THOMAS MASON, a witness called on behalf of complainant, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Thomas Mason; age, 30 years; residence, Brooklyn, N. Y.; and my occupation is contractor.

Q. 2. State what experience, if any, you have had in the laying of stone pavements.

67 A. I was formerly employed by Mr. Guidet for five years or more. During that time I received the blocks, and a part of the time superintended the laying of them.

Q. 3. Have you had occasion to observe the operation of laying the stone-block pavement on Myrtle avenue, on Atlantic avenue from Bond to Henry street, and on Lafayette avenue, in the year 1873 or 1874, while the work was going on; and, if so, how frequently?

A. I did every day upon Myrtle and Lafayette avenues; on Atlantic street I couldn't say how often—say three weeks or a month.

Q. 4. Please state if you observed particularly how the blocks were laid with reference to the joints lengthwise to the streets, and also crosswise.

A. I did; they were close jointed on the ends and open across the street.

Q. 5. How did they compare with the pavement in that respect with the pavement which you used to lay for Mr. Guidet?

A. Precisely the same.

Cross-examined by Mr. WITTER:

X Q. 6. Give the exact width, as near as you can, of the end joints and of the side joints in any of the pavements to which you refer which you saw in Myrtle avenue, or Lafayette avenue, or Atlantic avenue, and state exactly at what point of either of said avenues, so that it may be examined with a view to ascertain the correctness of your testimony.

A. I couldn't give the exact measurements; say a quarter of an inch on the ends and a half inch across the street, extending over one-half of the work on Myrtle and Lafayette avenues. I didn't stop on the work; I only rode over it. Atlantic avenue wasn't in my daily work. I had to stop to serve customers on both Myrtle and Lafayette avenues. I am a contractor now; I was in the baking business then for two years.

68 X Q. 7. Which half of the work on Myrtle and Lafayette avenues do you refer to in your last answer?

A. Yates avenue to Cumberland street, on Myrtle avenue; Cumberland street to Bedford avenue, on Lafayette avenue.

X Q. 8. And anywhere within those limits your statement with reference to the width of the joints is correct, is it?

A. To the best of my belief.

THOS. MASON.

Subscribed and sworn to before me this 26th day of October, 1875.

JOHN A. SHIELDS,
Examiner, etc.

Adjourned to Monday, November 8, 1875, at 12 m.

NEW YORK, *Nov.* 8, 1875—12 m.

Present, counsel as before.

CHARLES BILLINGS, a witness called on behalf of complainant, being duly sworn, testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Charles Billings; age, 24; residence, Rochester, N. Y.; and occupation, paver.

Q. 2. Did you, at the request and in the presence of Boyd Eliot, on or about the 14th of July, 1875, remove a portion of the pavement in Basin alley, in the city of Rochester?

A. Yes, sir.

Q. 3. What kind of material was the pavement that you removed?

A. Common limestone.

69 Q. 4. How much did you remove, and what did you do with it?

A. Removed not quite a square yard, placed it on a wagon, and had it drawn to the canal shipping office, where it was put into a barrel and headed up and marked. All this was done in my presence. It was shipped to C. G., 51 Chambers street, New York.

Q. 5. Have you, this morning, opened the said barrel in my office, and whether or not you recognized the contents of the same in character and appearance as those you took up and shipped?

A. I have opened the barrel in your office this morning. I recognized the barrel by my own hand-mark—that is, I marked it myself, in the presence of Mr. Eliot, Mr. Guidet, Mr. Charles Piper, and Mr. Christopher Jennejahn, and saw it headed up. I recognized the stone as the same in appearance as those taken up in Basin alley.

Q. 6. Please identify the barrel of stone; and the examiner is requested to mark the same "Exhibit Basin Alley Stone."

(Mr. Harding gives in evidence the barrel of stone, marked "Exhibit Basin Alley Stone, J. A. S., ex'r.")

Q. 7. Did you, on the same day, at the request of Mr. Eliot, remove a portion of the pavement in Brown street, in the city of Rochester?

A. Yes, sir.

Q. 8. Whereabouts in Brown street; how much did you remove, and what did you do with it?

A. It was about forty or fifty feet west of Frank street; I removed nearly a square yard; it was placed in a wagon, drawn to the canal shipping office, where it was barreled up and sent to C. G., 51 Chambers street, New York; it was barreled up in the presence of Mr. Eliot, Mr. Guidet, Charles Piper, and Christopher Jennejahn.

70 Q. 9. Have you opened a barrel of stone in the office of Mr. Harding this morning which you can recognize as the same stone, by their appearance, as you removed from Brown street?

A. Yes, sir.

Q. 10. Please point out said barrel to the examiner, who is requested to mark the same "Exhibit Brown Street Stone, Rochester," and state if you recognize the marks on the barrel.

A. I have pointed out the barrel of stone; I recognize the marks on the barrel.

(Mr. Harding gives in evidence the barrel of stone marked "Exhibit Brown Street Stone, Rochester, J. A. S., ex'r.")

Q. 11. Did you visit any other street in Rochester and remove a portion of the pavement at the request and in the presence of Mr. Eliot?

A. Yes, sir; Frank street, between forty and fifty feet north of Brown street; I tore up nearly a square yard, placed it in a wagon; it was drawn to the canal shipping office, and it was shipped in like manner as the preceding lots of stone.

Q. 12. Have you opened the barrel so referred to in your last answer, this morning, in my office, and state whether the contents are the same in appearance as removed by you from Frank street?

A. I have opened the barrel, and identified it by my own hand-mark; I recognized the stone as the same in appearance as taken by me from Frank street.

(The barrel of stone is identified by the witness, and the same is marked "Exhibit Frank Street Stone, Rochester, J. A. S., ex'r," and the same is given in evidence by complainant.)

71 Q. 13. What street, if any, in Rochester did you next visit in the presence of Mr. Boyd Eliot?

A. Mill street.

Q. 14. How much pavement did you remove from Mill street, what part of the street was it, and what did you do with it?

A. I removed nearly a square yard from the north side of the crossing of Mill and Mumford streets; I did the same with those stones as was done with the preceding lots.

Q. 15. Can you recognize the barrel by its marks, and the contents by their appearance? And, if so, identify it; and the examiner is requested to mark the same "Exhibit Mill Street Stone, Rochester."

A. I can recognize the barrel by its marks and the contents by their appearance; I identify the same.

(Mr. Harding gives in evidence the barrel of stone, marked "Exhibit Mill Street, Rochester, J. A. S., ex'r.")

Q. 16. What street in Rochester, if any, did you next visit at the request of Mr. Eliot; if so, did you remove any of the pavement, and, if so, how much, and what did you do with it?

A. South St. Paul street I next visited; I removed some pavement about one hundred feet from south of East Main street; I removed about the same quantity as in the preceding cases, and the stones were shipped also in like manner.

Q. 17. Can you identify the barrel and recognize the contents by their appearance; if so, please do it?

A. I can recognize the barrel and its contents; I now identify it.

(Complainant's counsel puts in evidence the barrel of stone, and the same is marked "Exhibit South St. Paul Street, J. A. S., ex'r.")

72 Q. 18. Were the parties named by you present at the removal of the pavement from all the streets mentioned by you, and were they present at the barreling and shipping of the stone?

A. Yes, sir; they were.

Q. 19. State whether or not the pavement removed by you and shipped are fair specimens of the stone composing the pavement on Brown street, Mill street, Frank street, South St. Paul street, and how as to Basin alley.

(Objected to as leading.)

A. They are, sir; and it is a fair specimen of the limestone pavement of Basin alley; that on Basin alley is limestone, that on all on the other streets is sandstone.

Q. 20. Have you been engaged in laying sandstone pavement in Rochester, and have you shipped a barrel of an average specimen of the stone used in that city?

A. Yes, sir.

Q. 21. Can you identify the barrel of specimens so shipped by you? And the examiner is requested to mark the same "Exhibit Sample Rochester Pavement."

A. I identify the barrel; the specimens therein are new stones.

(Complainant's counsel puts the same in evidence, marked "Exhibit Sample Rochester Pavement, J. A. S., examiner.")

Q. 22. How do those specimens compare with the stone used in all the pavements in the city of Rochester where the Medina sandstone is used?

(Objected to as leading.)

A. They are the same kind of stone that are used in all Medina sandstone pavements in the city; they are a fair specimen.

73 Cross-examined by Mr. WITTER:

X Q. 23. State as accurately as you can the exact location of the spot in Basin alley where you took up the square yard or so of paving stones contained in the barrel marked "Exhibit Basin Alley Stone."

A. Between forty and fifty feet from Exchange street, on the south side, close to the stone wall.

X Q. 24. In front of or near what building, if any, is the spot referred to?

A. It is about twenty or twenty-five feet to the rear of the Mechanics' Savings Bank.

X Q. 25. Can you think of any other mark or distance for finding the spot referred to? If so, make it a part of your answer.

A. You will find two marks, about three feet apart, made with a chisel, in the form of a cross, on the stone wall.

X Q. 26. Where, with reference to these chisel marks, is the spot referred to?

A. Right where the stone was taken out.

X Q. 27. Do you mean that if two lines were run across the alley from these two marks that this square yard or so would be embraced between them?

A. I believe it would.

X Q. 28. Who selected the spot as the place where the stones were to be taken up?

A. I got my orders from Mr. Eliot.

X Q. 29. Was that true of all the other square yards or so that were taken up in the other streets?

A. It was.

X Q. 30. If I understand your last two answers, Mr. Eliot selected in each of the streets you have testified about the square yard or so to be taken up, and then engaged you to take it up in those particular spots. Am I right?

A. No, sir.

74 X Q. 31. State the facts in that regard.

A. Mr. Eliot told us to rip up any place we saw fit to. No spot was selected by him in any way.

X Q. 32. Where were you when he told you about that?

A. On Brown street.

X Q. 33. And did that have reference to all the other streets you have mentioned?

A. Yes, sir.

X Q. 34. In how many places in Basin alley did you take up a yard or so?

A. None but the one place mentioned before.

X Q. 35. And is that true of the other streets you have mentioned?

A. That is true; yes, sir.

X Q. 36. Speaking now with reference to Basin alley, with what, if anything, did you replace the stones that were removed?

A. Medina sandstone.

X Q. 37. And how with reference to the other streets spoken of?

A. Replaced all with Medina sandstone—new stone.

X Q. 38. Was Mr. Eliot with you when the spot upon Basin alley was selected?

A. Yes, sir.

X Q. 39. Was he with you when the spots on the other streets were selected from which the square yard or so was taken?

A. Yes, sir.

X Q. 40. Who did select the spot from which the square yard was taken in Basin alley?

75 A. It was selected by chance. Mr. Eliot told us to keep close to the wall, because we could not obstruct the roadway, the alley being no more than twelve or fourteen feet wide.

X Q. 41. What do you mean by the words "selected by chance"?

A. I mean that he told us to take it near the wall if there was any paving there.

X Q. 42. Who picked out that particular square yard as the one to be taken up rather than any other?

A. It was not picked out by either one in particular; we all helped to pull it up except Mr. Eliot.

X Q. 43. What tools did you use?

A. A crowbar and a pick to pull it up.

X Q. 44. Were those the only tools you used in the whole operation of moving the square yard in Basin alley?

A. That is all, except a shovel to throw out the chips that came off the stone.

X Q. 45. What do you mean by chips that came off the stone? Came off by reason of what?

A. The stones seemed to be so brittle must have broken off when they were struck by the bar and pick.

X Q. 46. What was done with those chips or pieces that were broken off?

A. They were put in a pile with other rubbish that came off the pavement.

X Q. 47. Did these stones appear to be more brittle than freshly cut limestone?

A. I do not know; I never worked amongst limestone.

X Q. 48. What did you find, if anything, in the seams between the blocks of the square yard taken up in Basin alley?

76 A. I did not find much of anything. They were too close together, or pretty close together.

X Q. 49. Did they have the appearance of being worn upon the upper surface?

A. I believe they did.

X Q. 50. There was some dirt or gravel, was there not, between the sides of these stones?

A. I believe there was a small quantity.

X Q. 51. What was done with that when you came to repave the square yard or so?

A. It was such a small amount that it went with the chips in the pile of rubbish from off the top of the sand that was under the old pavement.

X Q. 52. Was every single paving stone of this square yard or so removed in Basin alley put into the barrel?

A. Not quite all. The barrel would not hold them all.

X Q. 53. Where are the stones that were not put in the barrel?

A. They were repaved back again.

X Q. 54. Do you think they can be distinguished from the sandstone with which you repaved the spot?

A. Yes, sir; it is easy to tell the difference.

X Q. 55. Have you taken or seen taken out from the barrel marked "Basin Alley Stone" every block which was put therein, and have you examined them since the barrel was opened?

A. No, sir; not every stone.

X Q. 56. How many of them have you taken out or seen taken out, and which you recognized as stones which you put therein?

A. Seven or eight of them were put on the top of the barrel.

77 X Q. 57. How do you know that the stones beneath the seven or eight which you examined are the same stones that were put in the barrel at Rochester?

A. I believe that they are the same, as by the marks on both heads of the barrels they have never been opened since I nailed them down.

X Q. 58. What peculiarities had that mark which enables you to say that the barrels had not been opened since you nailed them down?

A. Because the heads could never have been removed without breaking them to pieces; there were so many nails in them around the edges.

X Q. 59. Did you break them to pieces in removing the heads?

A. They were broken some when the heads were removed this morning.

X Q. 60. You refer to the Basin alley barrel, do you?

A. Each and every barrel-head was more or less damaged.

X Q. 61. Limit your consideration to the Basin alley barrel, and state whether the head was broken to pieces by your removing it this morning.

A. It was a little, around the edges.

X Q. 62. State whether this barrel was a new barrel, or whether it had been previously used, and for what.

A. I believe it had been used either for sugar or flour.

X Q. 63. Don't you think every one of those nails in the head of that barrel could have been drawn and the head removed by a skilful carpenter, and the head replaced, with the nails where they were before, without breaking the head in pieces?

A. Possibly he might, if he took long enough to do it.

X Q. 64. You don't know but what that was done, do you?

78 A. I do not, sir.

X Q. 65. Who put the two marks upon the wall in Basin alley to which you have referred?

A. Charles Piper.

X Q. 66. Were they put on on the same day that the stones were taken up?

A. They were, as soon as the job was done.

X Q. 67. By whose direction?

A. By the direction of Mr. Eliot; it was done so as to find the place again if needed.

X Q. 68. Could you repave the stones contained in the barrel marked "Basin Alley Stone," provided you had the stones which were rejected because the barrel would not hold them, in the position they were before?

A. I don't think I could, sir, because there were some that were thrown with the chips that got broken in taking them out.

X Q. 69. Could you repave either of the other square yards or so about which you have testified; and, if yea, which one?

A. I don't believe I could; there is always a loss by breaking up pavements; they chip more or less off, sometimes break up in pieces.

X Q. 70. What was done with the chips and broken pieces of each of the other square yards removed?

A. Put them to one side, because they were unfit for use.

X Q. 72. Does the barrel marked "Brown Street Stone" contain all the blocks taken up in the square yard or so removed on Brown street, excepting such as were broken to pieces and "unfit for use," as you say in your last answer?

A. No, sir; it does not.

X Q. 72. Same question as to the barrel marked "Frank Street Stone."

79 A. Same answer as to Brown street stone.

X Q. 73. Same question as to the barrels marked "Mill Street and South St. Paul Street Stone."

A. Same answer as to Brown street stone.

X Q. 74. What was done with the stones that were removed from the square yard or so in Brown street, Frank street, South Mill street, and St. Paul street which were fit for use, and which were not put into the barrels respectively; that is, were they repaved at the spots from which they were removed, or, if not, what was done with them?

A. There was a few stones that could not be got into the barrels when the barrels were filled; those that were left were thrown outside and afterwards drawn away, I believe.

X Q. 75. Why were not these stones you speak of repaved?

A. Because we had the holes repaired with new stone and finished before we loaded the old ones into the wagon.

X Q. 76. Those that you carried away were fit to be used in repairing, were they not, in every respect?

A. Yes, they were as good as those in the barrels here now.

X Q. 77. Then why didn't you use them?

A. Because we had the holes finished, and the stones drawn about a mile to the shipping office, where they were put into the barrels and headed up and marked.

X Q. 78. Where are they now, these rejected stones?

A. That is more than I can tell you.

X Q. 79. Where were they when you last saw them?

A. They were lying in a pile near the abutment of Fitzhugh street canal bridge, near the shipping office.

X Q. 80. Near or in front of what building was the square yard or so removed in Brown street?

80 A. It was nearly opposite the division of the two lots on the southwest corner of Brown and Frank streets.

X Q. 81. Locate the Frank street square yard as definitely as you can.

A. Nearly opposite an old stump that is near the northwest corner of Frank street and Brown. The stump stands near the curbstone.

X Q. 82. Locate the square yard in Mill street as near as you can.

A. On the north side of Mumford street, near the centre of the cross-walk running across Mill street, on the south side of that cross-walk.

X Q. 83. Locate the square yard in South St. Paul street as near as you can.

A. On the west side of South St. Paul street, near Main street, nearly opposite Buckley's oyster-house.

X Q. 84. You say you are a paver; do you work on the street; if so, in what capacity?

A. I work on the street at the manual work of paving, for a day's wages.

X Q. 85. In whose employ?

A. For the last four weeks I have been working for Silas Wagner, who lives on Bridge place, at Rochester, N. Y.

X Q. 86. Who was your employer before that?

A. Commissioners of public works of the city of Rochester.

X Q. 87. Do you know Col. Grantsyun?

A. I do by sight, but am not intimately acquainted with him.

X Q. 88. State whether, at the spots you removed the paving-stones in these different streets, ruts of any considerable depth had been formed by the wheels of the vehicles; and, if yea, mention which one of those streets.

81 A. There was not any ruts of a depth to speak of, except the one on Brown street; but they were up and down, more or less, like steps.

X Q. 89. What was that caused by?

A. I cannot tell, sir. The street has been in that condition, as near as I can recollect, a year or two or more; that is west of Frank street.

X Q. 90. Don't you think it was probably caused by frost?

A. I cannot tell, sir.

X Q. 91. How long have you been a paver?

A. Going on five years.

X Q. 92. In what streets in the city of Rochester have you done paving within five years?

A. Atwater street, North Water street, Munroe avenue, Lake avenue; I think that is all the new work I have done in the city of Rochester.

X Q. 93. Did you ever prepare blocks for the streets at the quarries or otherwise?

A. I have dressed Medina stone for paving.

X Q. 94. The upper surface of the stone at all the spots that you have spoken of were more or less worn, were they not, by the passage of vehicles?

A. They were all taken from where they could get plenty of traffic over them; they were worn smooth on the upper surface, almost round some of them.

X Q. 95. How were the horses enabled to get a foothold on that pavement?

A. I suppose they could get a foothold on it, but I can't say how; I suppose they would get it on the stones that project up.

82 X Q. 96. Wouldn't they get a foothold with the toe-caulk at the seam or joint of the stones; how as to that?

A. I believe they could.

X Q. 97. What did you understand that these stones were to come to New York for?

A. They were to come to be used I believe as evidence.

Redirect by Mr. HARDING:

R. D. Q. 98. Please examine the stones in the respective barrels thoroughly from top to bottom.

A. I have examined them.

R. D. Q. 99. Do those barrels or not contain fair specimens of the stone as removed by you from the several streets of which they now purport to be exhibits?

(Objected to: 1st, as leading; 2d, as an examination upon a topic not inquired of in the cross-examination; 3d, as a re-examination upon a topic already examined upon in the direct examination.)

A. They are, sir, fair specimens.

R. D. Q. 100. In placing the stones in the barrels to be shipped, state whether a selection was made or whether they were placed therein promiscuously as they were taken from the streets.

A. They were placed therein just as they came from the streets; there was no choice made of them.

R. D. Q. 101. Were the stones which the barrels respectively would not contain, and which were left behind at the shipping office, similar in appearance and character, or dissimilar from those shipped in the several barrels?

A. They were just the same in appearance as those shipped in the barrels.

R. D. Q. 102. Do you know or believe that there was any reason for leaving them behind other than that the barrels would not contain them?

83 A. No, sir; there was no other reason that I am aware of, and I do not believe there was any other reason.

R. D. Q. 103. In your opinion, state whether or not the pavement removed in the several places and shipped was a fair specimen of the pavements on the streets where the specimens were taken.

(Same three objections as before to question 99.)

A. They were fair specimens, I believe.

R. D. Q. 104. Have you been engaged in repairing those streets, and in taking up the pavements for such repairs to those streets?

(Same objections.)

A. I have sir.

CHARLES BILLINGS.

Subscribed and sworn to before me this 8th day of November, 1875.

JOHN A. SHIELDS,
Examiner, &c.

Adjourned to November 9, 1875, at 10 o'clock a. m.

NEW YORK, *November* 9, 1875.—10 a. m.

Present, counsel as before.

CHARLES PIPER, a witness called on behalf of complainant, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Charles Piper; 37 years; residence, Rochester, N. Y.; occupation, paver. I have been a paver five or six years.

84 Q. 2. Were you present on the 14th of July, 1875, when a portion of the pavement is Basin alley, Brown street, Frank street, Mill street, and South St. Paul street, in the city of Rochester, was removed in the presence of Mr. Boyd Eliot and others?

A. Yes, sir.

Q. 3. State whether or not you saw a barrel full of the stones which was taken from each of these pavements shipped at Rochester.

A. Yes, sir.

Q. 4. State whether or not the stones which were shipped were fair specimens of the pavements on the streets from which they were removed.

(Objected to as leading.)

A. Yes.

Q. 5. Did you examine the stones contained in the barrels marked "Basin Alley Stone;" and, if so, state whether you recognized them as being in the condition in which you found the stone in Basin alley at the time you removed them?

A. Yes, sir.

Q. 6. Did you examine the contents of the barrels marked "Brown Street Stone," "Frank Street Stone," "Mill Street Stone," and "South St. Paul Street Stone," and state whether or not they are the same stone or like the stone which you removed from those streets?

A. Yes, sir.

Q. 7. Who was present when the stone was removed and when they were shipped?

A. Christofur Jennejahn, Charles Billings, Mr. Boyd Eliot, and Mr. Guidet.

CARL PIPER.

Cross-examination waived.

Subscribed and sworn to before me this 9th day of November, 1875.

JOHN A. SHIELDS,
Examiner, &c.

85 CHRISTOFUR JENNEJAHN, a witness called on behalf of complainant, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Christofur Jennejahn; age, 24; residence, Rochester, N. Y.; and occupation, paver. I have been a paver between three and four years.

Q. 2. Were you present on the 14th of July, 1875, when a portion of the pavement in Basin alley, Brown street, Frank street, Mill street, and South St. Paul street, in the city of Rochester, was removed in the presence of Mr. Boyd Eliot and others?

A. Yes, sir.

Q. 3. State whether or not you saw a barrel full of the stones which were taken from each of those pavements shipped from Rochester for New York.

A. Yes, sir.

Q. 4. Have you been engaged in repairing the pavements from time to time on Brown street, Frank street, Mill street, and South St. Paul street, and Basin Alley?

A. Yes, sir.

Q. 5. State whether or not the stones which were shipped were fair samples of the stone in the pavements on the streets from which they were removed.

(Objected to as leading.)

A. Yes, sir.

Q. 6. Did you examine the stones in the barrels here present marked "Basin Alley Stone," "Brown Street Stone," "Mill Street Stone," and "South St. Paul Street Stone," and state whether or not they are the same stone, or like the same stone, in the condition in which you found them in those pavements?

(Objected to as leading.)

86 A. Yes, sir.

Q. 7. Who was present when the stone was removed and when they were shipped?

A. Mr. Boyd Eliot, Mr. Guidet, Charles Billings, and Charles Piper.

Cross-examined by Mr. WITTER:

X Q. 8. You say, in answer to question 6, that the stones in the several barrels are in the same condition in which you found them in the pavements; do you mean by that to say that the stones are in the same condition in which they were taken up, and before they were put into the barrels?

A. Yes, sir.

X Q. 9. Do you mean anything more than that; if yea, state what?

A. No, sir; no more.

X Q. 10. Mention all the places, as accurately as you can, where you have been engaged upon repairs upon all of the streets mentioned in your direct examination.

A. Basin alley, on the south side of Basin alley, between fifty and sixty feet from Exchange street; Brown street, southwest corner, between forty and fifty feet from Frank street; Frank street—as near as I can guess, it was a hundred feet from Brown street, on the west side of Frank street; Mill street, northeast corner of Mumford street, near the cross-walk; South St. Paul street, between sixty or seventy feet from Main street, southeast corner. That is all.

X Q. 11. In whose employ are you, and in whose employ have you been, as paver?

A. I am now in the employ of Whitmore, Rauber & Vicenus; I have been in no one else's employ.

X Q. 12. Did you take any part in the removal of the stones from the streets; I mean the stones contained in the barrels?

87 A. Yes, sir.

X Q. 13. What did you do?

A. Helped take them up, put them in barrels, and drawing them to the canal shipping office, seeing them headed up.

X Q. 14. Who told you and the other men where to go to work to take up stones?

A. Mr. Boyd Eliot.

X Q. 15. In whose employ is Charles Piper?

A. Whitmore, Rauber & Vicenus.

X Q. 16. When you repaired the pavement in the various places you have mentioned, did you put back substantially the same kind of pavement?

A. Yes, sir.

X Q. 17. Do you consider it a good pavement; what is your judgment in that respect?

A. It is about the same as is done there.

X Q. 18. How long do you think such pavement as you put down for your employers would last and be in fair condition?

(Mr. Harding objects to this line of cross-examination, and notifies the counsel for defendant that this witness has not been called to testify as to the character of the pavement, but merely to testify as to the materials of which it is composed, and he shall move the court to strike out the testimony.)

A. I don't hardly know how long it would last.

X Q. 19. It would last and be in fair condition for a good long while, wouldn't it?

(Same objection, and as leading.)

A. I don't know.

88 X Q. 20. How long had the pavement which you repaired in Frank street been down, where you repaired it, before you repaired it?

A. I couldn't tell how long.

X Q. 21. How long do you think?

A. I don't know how long.

X Q. 22. How long in Brown street?

A. I don't know.

X Q. 23. Messrs. Whitmore, Rauber & Vicenus claim to lay about as good and durable pavement as there is, don't they?

A. Yes, sir.

X Q. 24. It stands well, don't it, against ruts; I mean the pavement laid by Whitmore, Rauber & Vicenus; it don't get ruts in it very quick when it is well laid, does it?

A. Some ruts get into it sometimes with heavy loads.

X Q. 25. You mean it jams the stones down, and sometimes makes ruts with heavy loads?

A. Yes, sir.

X Q. 26. What do you do then?

A. Take it up and repair it.

X Q. 27. Which way are most of the stones the longest, across the street or lengthwise the street?

(Objection continued.)

A. There is all sizes of stone.

(Defendant's counsel makes an objection that the witness has been requested by complainant's counsel to say so if he don't understand the question, and defendant's counsel, therefore, now withdraws the question.

89 At the time the objection was being made, the defendant's counsel was showing witness a diagram, and Mr. Harding requested the diagram to be annexed to the question, and it was on that supposition, and with a view to enable the defendant's counsel to fully explain his correct meaning to the witness, who is a foreigner, that he made the suggestion, in order that the counsel, the witness, and the court might fully understand the matter, as the witness's answer, prior to the diagram being exhibited to him, manifestly showed that he didn't understand the question: and complainant's counsel, in several of his questions in his examination-in-chief, has asked the witness if he understood the question before the examiner took his answer down. Mr. Harding renews his protest against this course of cross-examination as new matter, the witness having been called solely to identify some stones which he removed from a pavement.

Defendant's counsel offers in evidence the diagram referred to, and it is marked "Defendants' Exhibit Jennejahn, J. A. S., Ex'r.")

Mr. Harding continues his objection and protest against this course of cross-examination.)

CHRISTOFUR JENNEJAHN.

Subscribed and sworn to before me, tbis 9th day of November, 1875.

JOHN A. SHIELDS,
Examiner, &c.

VALENTINE F. WHITMORE, a witness called on behalf of complainant, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Valentine F. Whitmore; age, 31; residence, city of Rochester; and occupation, contractor.

Q. 2. What experience have you had in connection with laying pavements in Rochester?

90 A. I have paved and repaved (and have sold pavings to contractors) streets in Rochester for four years.

Q. 3. Have you taken up the pavements in the streets during that time for the purpose of introducing water, and repaved, and mention some of the streets which have been taken up under your direction and observation?

A. I did the repaving for the water-works contractor, and the street railroad company; in fact, I don't believe there is a paved street in the city of Rochester but what the pavement has been taken up for the purpose of laying water, during the last year or year and a half; the new water-works started and laid water-pipe.

Q. 4. Did you do all this work?

A. Yes, sir; I did all the repaving for the water-works.

Q. 5. Please state if you have examined the stone contained in the exhibits, "Brown Street Stone," "Frank Street Stone," "Mill Street Stone," "South St. Paul Street Stone" here present, and how they compare with the stones as found in those streets at the time the streets were opened in Rochester for the purpose of laying water?

A. I have examined them, and I consider them a fair sample of the stone pavement in those streets.

Q. 6. How do they compare with the stones in the streets of Rochester generally which were taken up for the purpose of laying water-pipes?

A. I consider them a fair sample of the Medina stone pavement in the city of Rochester.

Q. 7. What do you mean by the Medina stone pavement?

A. I mean the stone pavement throughout the city of Rochester.

91 Q. 8. State whether or not you furnished the barrel of stone marked "Sample Medina Sandstone"; state how it compares with the stones used in the new pavements in the city of Rochester, and which have been used?

A. We furnished the sample, and I consider them a fair sample of the Medina sandstone pavement used in the city of Rochester.

Cross-examined by Mr. WITTER:

X Q. 9. State whether, in your opinion, you and your partners, Rauber & Vicenus, are good judges of the character and quality of stone pavement, and what opportunities you and your partners have had, and education in that direction, for becoming such?

(Objected to, and all questions except those relating to the stones composing the pavements in Rochester.)

A. I consider we are good judges of stone pavement. We have paved some of the streets in the city of Rochester, and repaved. I have been in the business over four years.

X Q. 10. State whether you and your partners have done any paving from written or printed specifications.

(Same objection.)

A. Yes, sir.

X Q. 11. Satisfactorily?

A. Every pavement has been accepted by the city authorities.

X Q. 12. It was satisfactorily done, so far as you know, was it not?

A. Yes, sir.

X Q. 13. Do you remember seeing me in the city of Rochester, and having several short interviews with me, at the time when your partners, Vicenus & Rauber, were examined in this case?

92 A. I recollect of seeing you there; don't recollect having any conversation but once; that was general to all the parties in the room.

X Q. 14. Did you not read or hear read at that time a copy of the patent of Charles Guidet, shown you by me, and did you not say to me, in the hearing of others, that that patent was a good description of the pavement which had been laid in Rochester for many years, or words substantially to that effect?

(Objected to as new matter, and the notice heretofore given continued; and further, that the defendant, by pursuing this line of inquiry, makes the witness his own.)

A. I heard it read; I don't think I made any expression. If I did, at a glance at the diagram of the patent—I don't know as I can explain myself thoroughly. (Witness requests his answer to be read.) At first sight I considered the pavement similar to that, but on more thoroughly examining the Guidet patent I don't think it is.

(The answer of the witness, commencing with the words "but on more thoroughly examining," &c., to the end objected to as not responsive to the question, and as a voluntary statement by the witness of his present opinion on the Guidet patent, which was not asked for.)

X Q. 15. Was it not simply on account of a request which you made to me not to be called as a witness, that I did not call you to testify to the identity of the Medina stone pavement with that of the Guidet patent; and did you not give as a reason that you thought that both your partners were enough without you?

(Objected to as improper cross-examination, the witness not having been asked in reference to the Guidet pavement in his direct examination.)

A. My reason was that you had witnesses enough there to prove the manner of paving in the city of Rochester.

93 X Q. 16. You mean to be understood that you did make the request, do you?

(Same objection.)

A. Yes, sir.

VALENTINE F. WHITMORE.

Subscribed and sworn to before me, this 9th day of November, 1875.

JOHN A. SHIELDS,
Examiner &c.

George Geib, a witness called on behalf of complainant, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence and occupation?

A. George Geib; age, 35; residence, Buffalo, N. Y., and occupation —I am interested in paving; have been so interested some eight years.

Q. 2. Have you removed portions of the pavement at the request of Mr. Boyd Eliot, and in his presence, in certain of the streets in Buffalo, and shipped or caused to be shipped, portions of such stone to this city?

A. Yes, sir.

Q. 3. From what streets did you so remove portions of the stone?

A. Erie, Main, Niagara and Genessee.

Q. 4. Please examine the barrels of stone and the contents of the several barrels now shown to you, and state whether you can identify the stones so removed and shipped from the several streets; and point them out to the commissioner, to be marked accordingly.

A. I can identify them, and I will now point them out.

94 (Complainant's counsel offers in evidence said four barrels of stone, which are marked respectively "Exhibits, Erie Street Stone, Buffalo;" "Main Street Stone, Buffalo;" "Niagara Street Stone, Buffalo;" and "Genesee Street Stone, Buffalo, J. A. S., Ex'r.")

Q. 5. Please state whether the stones pointed out by you, and marked by the commissioner, are or are not fair specimens of the stones composing the pavement of those streets respectively?

(Objected to as leading.)

A. They are.

Q. 6. Were the stones so removed marked in your presence at the time of their removal?

A. Yes, sir.

Q. 7. Did you furnish and cause to be shipped here a barrel of new stones, such as are used, and such as were being laid last summer in the streets of Buffalo?

A. I didn't cause them to be shipped here, but I furnished them.

Q. 8. Can you identify those stones among any here present; if so, point them out to the examiner, who will mark them accordingly?

A. I can identify those stones, and now do so.

(Examiner marks said barrel of stone, "Sample New Stone, Buffalo, J. A. S. Ex'r," and the same is given in evidence.)

GEO. GEIB.

Cross-examination waived.

Subscribed and sworn to before me, this 9th day of November, 1875.

JOHN A. SHIELDS,
Examiner, etc.

95 **Jacob Reimann**, a witness called on behalf of complainant, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence and occupation?

A. Jacob Reimann; age, 46; residence, Buffalo, N. Y., and occupation, paver; I have been a paver twenty-two or twenty-four years.

Q. 2. Are you familiar with the character of the stones of the pavement on the streets of Buffalo?

A. Yes, sir.

Q. 3. Were you present, and did you assist in removing portions of the stone pavement on Erie, Main, Niagara and Genesee streets, in the city of Buffalo, in the month of July last?

A. I was.

Q. 4. Please examine the contents of the barrels of stone marked "Erie Street Stone," "Main Street Stone," "Niagara Street Stone," and "Genesee Street Stone," and state whether or not you can identify them as portions of the stone removed from those streets respectively?

A. I have examined the barrels so marked; I can identify them as portions of the stone removed from those streets.

Q. 5. State whether or not they are fair specimens of the stones composing the pavements in those streets?

(Objected to as leading.)

A. Yes, sir.

Cross-examined by Mr. **Witter**:

X Q. 6. Are you the Jacob Reimann who was examined as a witness for the defendants in the city of Buffalo?

A. I am.

96 X Q. 7. I observed that some of the stones in the barrels to which you have referred are broken or chipped; how did that happen?

(Mr. Harding requests the counsel to point out to the witness the stones alluded to; and he objects to the question as implying that the stones are chipped, which the witness has not admitted.

Defendant's counsel having called the attention of the witness to a sufficient number of the stones in one of the barrels to indicate what is meant by the question, and having had them marked, repeats the question.)

A. I don't know; I suppose by transferring—throwing into the barrels.

X Q. 8. Do the stones removed by you and others, from the several spots, show which was the upper side by their being worn more or less smooth by the travel?

A. Yes, sir.

Redirect by Mr. **Harding**:

R. D. Q. 9. Were the stones which the counsel selected in the upper half of the barrel, marked 1, 2, 3, 4, 5, 6, 7, 8, 9, 10?

A. Yes.

R. D. Q. 10. Is the breaking or chipping to which he calls your attention, apparent on the stone by the fresh surface exposed?

A. I don't understand what you mean; it is very seldom you can take up pavement without taking off little chips with the bar.

R. D. Q. 11. Take, for example, the stone marked No. 1; was the portion of that stone to which defendant's counsel calls your attention, the whiteish portion, at the smallest part of the stone?

A. Yes; that was the part to which he called my attention.

97 R. D. Q. 12. Did the counsel in making his selection pass over or reject certain stones as not having any chips from them; and, if so, will you mark those stones with an O?

A. I have marked them with an O.

R. D. Q. 13. Did the stones marked from 1 to 10 and those marked with a circle occupy about one-half of one of the barrels?

A. Yes, sir.

R. D. Q. 14. Please put your finger on the broken part of No. 2 and put a black dot on where the chipping was to which your attention was called.

A. I have done so.

R. D. Q. 15. Do the same to Nos. 3, 4, and 5.

A. I have done so.

R. D. Q. 16. Will not the difference in color show the place on these stones where the chipping occurs, to which the counsel has called your attention?

A. Yes, sir.

Recross-examination:

R. X Q. 17. There were ten stones marked as chipped or broken, and eight marked as not chipped or broken, were there not?

A. Yes, sir.

JACOB REIMANN.

Subscribed and sworn before me this 9th day of November, 1872.

JOHN A. SHIELDS,
Examiner, etc.

SEBASTIAN WETTRICH, a witness called on behalf of complainant, being duly sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

98 A. Sebastian Wettrich; age, 38 years; residence, Buffalo, New York; and my occupation, paver; have been a paver eleven years.

Q. 2. Did you help Mr. Geib and Mr. Reimann take up some stones in July last in Erie, Main, Niagara, and Genessee streets, in Buffalo?

A. Yes, sir.

Q. 3. Have you examined in the barrels marked "Erie Street Stone," "Main Street Stone, "Niagara Street Stone," and "Genesee Street Stone;" and, if so, state whether they are the same stones, or like the same stones which you helped take up on these streets.

A. Yes, sir.

Q. 4. State whether or not they are a fair sample of the stones in the pavements on those streets.

(Objected to as leading.)

A. Yes, sir.

SEBASTIAN WETTRICH.

Subscribed and sworn to before me this 9th day of November, 1875.

JOHN A. SHIELDS,
Examiner, etc.

Adjourned subject to notice.

U. S. circuit court, eastern district.

CHARLES GUIDET
vs-
THE CITY OF BROOKLYN. } In equity.

99 SIR: Please take notice that witnesses will be examined and testimony taken on behalf of the plaintiff in the above-entitled suit, before Joseph D. Husbands, esq., special examiner in this suit, at his office in the city of Rochester, New York, on the 17th day of November, 1875, at 10 o'clock a. m., and will continue from day to day, pursuant to adjournments.

Dated New York, Nov. 11, 1875.

WILLIAM HILDRETH FIELD,
Plaintiff's Solicitor.

To WILLIAM C. DE WITT, Esq.,
Defendant's Solicitor.

U. S. circuit court, eastern district of New York.

CHARLES GUIDET
vs.
THE CITY OF BROOKLYN. } In equity.

It hereby is consented that the time for closing the proofs in the above-entitled case be extended thirty days from date.

N. Y., Nov. 11, 1875.

WILLIAM HILDRETH FIELD,
Complainant's Solicitor.
WILLIAM C. DE WITT,
Defendant's Solicitor.

100 United States circuit court for the eastern district of New York.

CHARLES GUIDET, COMPLAINANT,
vs.
THE CITY OF BROOKLYN, DEFENDANT. } In equity.

Proofs and proceedings on behalf of the said complainant.

UNITED STATES OF AMERICA,
Northern District of New York, City of Rochester, ss:

Before Joseph D. Husbands, special examiner, appointed by order of this court, bearing date :

Be it remembered that on the 17th day of November, in the year of our Lord one thousand eight hundred and seventy-five, before me, the said Joseph D. Husbands, as such examiner, so duly appointed, at my office, No. 143 Powers' Commercial Building, in the said city of Rochester, appeared the said Charles Guidet, with Mr. Wm. Hildreth Field and George Harding, his counsel; and the said The City of Brooklyn, by Mr. Wm. C. Witter, its counsel; and the following proceedings are had: The following witnesses appeared at the time and place aforesaid in behalf of the said complainant, and each and every of them were by me duly cautioned and sworn to testify, and the truth, the whole truth, and nothing but the truth, to depose and say between the parties aforesaid; and the said witnesses, after being severally so sworn and cautioned severally do depose and testify as follows, that is to say:

101 NORTHERN DISTRICT OF NEW YORK,
County of Monroe, ss:

VALENTINE F. WHITMORE, of the city of Rochester, in said city and State, being of full age and having been by me duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and carefully examined in the said cause pending as aforesaid, doth depose and say as follows, that is to say:

Direct examination by Mr. GEORGE HARDING.

1 Q. Have you heretofore testified in this cause before Examiner Shields in the city of New York?

A. Yes, sir.

2 Q. Will you now remove in the presence of the examiner here and the opposing counsel, a portion of the pavement either in Main street or State street, anywhere convenient to this office, so that the same may be made an exhibit in this cause?

(Mr. Harding here states to counsel for this defendant that any portion of the pavement convenient to building, or any location to be suggested by him, he has no objection to the witness to adopt at the suggestion of the counsel. If not, the witness may select such part of the pavement as he may choose.

Mr. Witter, of counsel for the defendant, in reply to the above invitation, says that he should be very happy to accept it, and inasmuch as the streets are now covered with snow to a depth, in his judgment, of four inches, thus obscuring entirely the street, so that it is impossible to make any selection of what would be a fair specimen of the Medina stone pavement, he offers to make such choice of locality as soon as the streets are clear enough to enable him to do it intelligently and fairly. Defendant's counsel further adds that it is even now snowing hard, which renders the invitation of the complainant's counsel still further inappropriate, if intended to be accepted and acted upon at 102 once; and he further says that he has partially made arrangements to remove and put in evidence some of the Medina stone pavement, and begs permission of this court to do the same, and at a time when it can be intelligently done, namely, when the streets shall be clear.

Mr. Harding replies that he has attended with his client at considerable expense and inconvenience, and has a force of workmen now present to clear the snow from the pavement and remove the stone. That every day's delay at this season of the year increases the difficulty of removing the stone; that he merely requested defendant's counsel to designate a portion of Main and State streets in Rochester, those streets having been referred to in defendant's testimony as having been laid prior to the Guidet patent, with a view to overcome the suspicion or suggestion that the witness would make a special selection of a portion of those pavements at the suggestion of the plaintiff or some one in his behalf. As plaintiff proposes to proceed with his testimony at this time, if the defendant's counsel will not make a designation of any portion at random on those two streets, Mr. Harding will request the witness to proceed and select a portion at random, and have it marked as an exhibit in this cause, leaving the defendant to prove in its own way the character of the stone on those streets, as he has intimated he is prepared to do. As the stone are bulky and expensive to transport, it was hoped that the defendant's selection at random of some portion on those streets would have been made in order to bring before the court at the least expense, a specimen of the stone taken at random therefrom. Mr. Harding also adds that to avoid the expense of revisiting Rochester, he will cause the snow to be swept from the pavement referred to by the counsel for defendant, and have the stone removed in his presence and brought from the street before this examiner, if he will designate any portion of Main or State street which he has arranged or desires to make an exhibit of.

Mr. Witter suggests to the court that the lateness of the 103 season and the increasing difficulty of removing stone alluded to by complainant's counsel should not now prejudice the defendant, inasmuch as the complainant had delayed taking proofs in this cause from the day of , 1875, till the present time.

Mr. Harding, understanding that the defendant's counsel declines to designate any place to remove the stone, requests the witness to go and select a piece of pavement in such place as he may choose at random, and requests the defendant's counsel to be present when the witness does so.)

Answer to question No. 2.

I have selected a portion of the pavement from State street at random, in front of Henry E. Shafer's crockery store, No. 39, and I carefully removed the stone therefrom and put them in a barrel without breaking any except the first stone, which is not put in the barrel on account of being slightly broken, but which is here present.

(Mr. Harding requests the examiner to cause the stones to be marked from 1 to 44, both inclusive, and the barrel to be marked an exhibit and closed, and shipped to the clerk of this court, at Brooklyn. It is marked accordingly, the barrel being marked "Exhibit A B.")

Q. 3. Were the examiner and the counsel for the defendant present at such removal and marking of the stone?

A. They were.

Q. 4. State whether the stone so removed were a fair specimen of the stone on Main street, State street, St. Paul street, Frank street, Brown street and Mill street?

A. Yes, sir; they were.

Q. 5. Had you any difficulty in cleaning away the snow and removing the stone from the street?

A. No, sir.

104 Q. 6. Were Mr. Rauber, Mr. Theis, and Mr. Peter Shaffer present at the time the stone were removed and marked?

A. They were.

(Defendant's counsel requests that the first stone taken up, which was said to be slightly broken, be also sent to the clerk as an exhibit; and the defendant's counsel, in order to further the proceedings, and that he, himself, may have time without incommoding the complainant, to take such testimony as he may deem expedient and without the necessity of again coming west, waives any cross-examination of this witness. Mr. Harding requests the examiner to mark the stone Defendant's Exhibit, and send it to the clerk. Mr. Witter consents. It is marked "Defendant's Exhibit, 1st Stone.")

VALENTINE F. WHITMORE.

Subscribed, sworn and taken this 17th day of Nov., A. D. 1875, before me.

JOS. D. HUSBANDS,
Examiner.

NORTHERN DISTRICT OF NEW YORK,
County of Monroe, ss:

JOHN RAUBER, of the city of Rochester, being of full age, and having been by me duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and carefully examined in the said cause pending as aforesaid, doth depose and say as follows, that is to say:

Direct examination by Mr. GEORGE HARDING.

Q. 1. Have you been examined as a witness before in this case?

A. 1. Yes, sir.

105 Q. 2. Were you present this morning when a portion of the pavement on State street, opposite Shafer's crockery store was removed and packed in presence of the examiner and the defendant's counsel in a barrel, and marked "Exhibit A B?"

A. 2. Yes, sir.

Q. 3. State whether or not *whether* said stones so removed and packed are a fair specimen of the stones comprising the pavements on

Main street, State street, St. Paul street, Frank street, Brown street, and Mill street, in Rochester.

A. 3. I don't understand you. I only saw one place packed; don't know anything about others. Read the question over again.

Q. 4. Have you difficulty in understanding our language?

A. 4. I think so.

(Mr. Harding requests the word sample be used in place of word specimen, so as to read, whether these stones which you saw this morning were fair samples of the stones on the pavement on State street. Read the question.)

Q. 5. Were these stones which you saw this morning fair samples of the stones in the pavement on State street?

A. 5. Yes, sir.

Q. 6. Were they or not fair samples of the stone on Main street?

A. 6. I should think about as near as you could get it.

Q. 7. How about St. Paul street, Frank street, Brown street, and Mill street?

A. 7. I should think they were about the same thing.

JOHN RAUBER.

Sworn and taken November 17th, A. D. 1875, before me.

J. D. HUSBANDS,
Examiner.

(Defendant's counsel waives the cross-examination of this witness for the reason stated at the end of Mr. Whitmore's deposition.)

106 NORTHERN DISTRICT OF NEW YORK,
County of Monroe, ss:

MATHIAS THEIS, of the city of Rochester, being of full age, and having been by me duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and carefully examined in the said cause pending as aforesaid, doth depose and say as follows; that is to say:

Direct examination by Mr. GEORGE HARDING:

Q. 1. Have you been examined as a witness before in this case?

A. 1. Yes, sir.

Q. 2. Did you see the stones in the barrel marked "Exhibit A B" removed from State street this morning?

A. 2. Yes, sir.

Q. 3. How long have you been engaged in paving?

A. 3. Twenty-one years. Since 1857, in Rochester.

Q. 4. Are the stones in that barrel fair specimens of the stones in the pavement on Main street, State street, St. Paul street, Frank street, Brown street, and Mill street, in Rochester?

A. 4. Just about the same.

MATHIAS THEIS.

Sworn and taken this 17th day of Nov., A. D. 1874, before me.

J. D. HUSBANDS,
Examiner.

(Cross-examination waived for the same reason as with Mr. Whitmore.

Mr. Harding states that in view of the fact that the defendant
107 has waived cross-examination of these witnesses in order to ex-

pedite the complainant, in the same spirit the complainant gives notice that he will not call any other witnesses under the present notice.

Counsel for the said defendant consents that the original depositions be sent by the examiner to William Hildreth Field, esq., No. 271 Broadway, New York City, duly certified by the said examiner.)

Rochester, N. Y., November 17th, A. D. 1875.

J. D. HUSBANDS,
Examiner.

UNITED STATES OF AMERICA,
Northern District of New York,
County of Monroe, City of Rochester, ss:

I, Joseph D. Husbands, the examiner named in the caption of foregoing cause and depositions, do hereby certify that on the 17th day of November, A. D. 1875, I was attended by the parties to a suit in equity pending in the United States circuit court for the eastern district of New York, in which Charles Guidet is the complainant and the City of Brooklyn is the defendant, and by their respective counsel, and also by the witnesses produced by the said complainant at the time and place aforesaid, and such witnesses being of sound mind and lawful age, were and each was by me first sworn and carefully cautioned to testify the truth, the whole truth, and nothing but the truth in the said cause pending as aforesaid, and were carefully examined, and their several depositions were under my directions reduced to writing in the manner agreed upon by and between the said parties in the presence of the said witnesses respectively, and from their statements severally and respectively, and the said depositions being carefully read to the said several witnesses they severally subscribed the same as aforesaid and in the presence of the said parties and their said counsel.

And I do further certify that I am not of counsel nor attorney for either of the said parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

108 In testimony whereof I have hereunto set my hand, at Rochester, in said northern district, this 17th day of November, A. D. 1875, and of the Independence of the United States the one hundredth.

J. D. HUSBANDS,
Examiner.

NORTHERN DISTRICT OF NEW YORK,
City of Rochester, ss:

I, Joseph D. Husbands, the said examiner, do hereby certify that the foregoing and annexed are true copies of the depositions and proceedings this day taken and had before me as examiner at Rochester as aforesaid.

Rochester, N. Y., November 17th, A. D. 1875.

J. D. HUSBANDS,
Examiner.

United States circuit court, eastern district of New York.

CHARLES GUIBET
vs. } In equity.
THE CITY OF NEW YORK.

It is consented that the time be further extended (for closing proofs) thirty days from date.

New York, December 8, 1875.

GEO. GIFFORD,
Defendant's Counsel.
WILLIAM HILDRETH FIELD,
Plaintiff's Solicitor.

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109 United States circuit court, eastern district of New York.

CHARLES GUIDET
vs. } In equity.
THE CITY OF BROOKLYN.

SIR: Please take notice that witnesses will be examined and testimony taken on behalf of the plaintiff in the above-entitled suit, before John A. Shields, esq., special examiner in this suit, at the office of George Harding, esq., No. 18 Vesey street, New York City, on the 21st day of December, 1875, at 12 o'clock, noon, and will continue from day to day, pursuant to adjournments.

New York, December 8, 1875.

WILLIAM HILDRETH FIELD,
Plaintiff's Solicitor.

To WILLIAM C. DEWITT, Esq.

NEW YORK, *December* 21, 1875—12 m.

Present, counsel as before.

JOHN BOYD ELIOT, a witness on behalf of complainant, being recalled, testifies as follows:

Q. 1. Have you read the testimony of John Stimpson in this case, and examined the streets in Boston and Cambridge referred to by him in his testimony?

A. I have examined the streets at different times since the testimony was given, and have had photographs made of different portions of the streets, in order to represent the character of the pavement laid in said streets.

Q. 2. Please produce said photographs and and explain them.

110 A. I have present photographs of three different places in the vicinity of Boston where I found the kind of pavement that Mr. Stimpson explained in his testimony, and for which he said he made the blocks of stone. The first photograph which I offer was taken in front of the First National Bank, on Main street, in Cambridge, Massachusetts. The second one is in substantially the same portion of the street, but with the camera placed nearer to the portion where the stone blocks were laid, so as to give a more distinct view of the shape of said blocks, and the manner of laying them in the street. The third photograph is taken at the intersection of Mount Vernon Place and Chelsea street, Charlestown, Massachusetts; and as they all represent

substantially the stone blocks referred to by Mr. Stimpson, one explanation will answer for all three. As is plainly represented in said photographs, the blocks which he said he made to be laid in the streets were merely used for the purpose, being placed alongside of the string pieces of the street railways for the purpose of supporting the lines of the track and holding the foundation of the track in a more firm position than the ordinary cobblestone would do. Said photographs also show very plainly that said stones do not form broken joints with one another, therefore do not have end joints between the several stones in the direction of the line of travel, as specifically described and shown in the patent to Charles Guidet, as one of the characteristics of his invention. These are what is known as headers, laid alongside the string pieces of street railway tracks to support the track, and the blocks of stone are of variable depths, and may be met with in various other cities besides Boston, as for example in several of the streets of New York, and also in Philadelphia.

(Three photographs given in evidence and marked "Exhibits Eliot, Stimpson testimony, J. A. S., ex'r.")

Q. 3. Did you go over the whole of said streets in Boston referred to by said Stimpson in his testimony?

111 A. I did, and examined them very carefully, and find that said photographs do represent the pavement as described by him in said streets.

Q. 4. Have you read the testimony of Horace Leland, taken by defendants in this case, and have you examined the pavement referred to by him as being located in 28th street, in New York City?

A. I have read the testimony of said Leland, and have carefully examined the pavement referred to as being located in said street, and I also had a photographic view made of one place in said street for the purpose of showing the shape of the blocks, and I now produce a copy of said photograph, and offer it in evidence.

(Photograph put in evidence and marked "Exhibit Eliot, Leland's testimony, J. A. S., ex'r.")

Said photograph is taken from a portion of the pavement in 28th street, on the north side near Lexington avenue, nearly opposite No. 127 East 28th street; and it shows that said blocks forming the pavement are what is known as Belgian blocks, that are generally in the form of truncated pyramids, and which is specially referred to in the patent of Charles Guidet as possessing objectionable features, as the joints are generally about the same all around the blocks. This photograph shows at the bottom side a portion of the curb-stone, and then a few blocks that are about twice as long as they are wide, and which must have been the blocks referred to by Mr. Leland, in his testimony, as being like those represented in the Guidet patent. But it will be observed that these blocks are placed with their sides parallel to the curbstone, to form the gutter of the street, and therefore if they were made exactly like the blocks described in the Guidet patent, they could not form such a pavement as he describes, as they are laid in the wrong direction in the street, forming, as plainly shown in the photograph, tight joints transversely to the street and open joints in the line of travel, which is just the opposite of the method of laying such blocks described in said patent.

112 Q. 5. Have you read the testimony of Henry Utterhart, taken by defendants in this case, and have you had photographs made of the pavements referred to by him in his testimony, and if so, produce the same and explain them?

A. I have read the said testimony and have had photographs made of the several places which he and his assistants said they measured, and of which they made in some of the places imprints on sheets of canvas, and which are in evidence as exhibits of the defendants; the first pair, Nos. 1 and 2, of photographs which I offer in evidence were both taken from the same spot, namely, on Myrtle avenue east of Yates avenue, and which is taken so as to represent a portion of one of the spots of which Mr. Utterhart took his imprint, and then I had the camera so arranged as to take in about three or four times as much more of the pavement as he and his assistants measured; the portion which they measured is bounded by the curbstone on one side and by two pebbles near the centre of the picture, which we placed in the joints, and in the other picture (No. 1) the same portion is indicated by two leaves, which are placed as the boundary of the portion which they measured; No. 3 of said photographs is taken from another portion of Myrtle avenue which Mr. Utterhart testifies about, and is arranged so as to embrace in said photograph another of the spots which he and his assistant measured, said spot being bounded in a similar manner by the curbstones at one side and two small pebbles near the centre of the picture to represent the portion of the pavement from which they took their impression on canvass. The next photograph (No. 4) which I offer in evidence represents the other spot which they measured on Lafayette avenue near Skillman street, and the boundary in that is marked by two leaves held in position by pebbles placed thereon. I had these several photographs made by mounting the camera immediately over the pavement, with the tube in a vertical position, so that the sizes of the joints might be correctly represented, both at the ends and sides of the stones, and I had considerable more of the pavement embraced in the photographs than Mr. Utterhart and his assistant measured, for the purpose of showing the impossibility of correctly measuring these joints, as they professed to do, and also for the purpose of showing that, whether from accident or design, they seem to have selected spots in which the end joints between the majority of the stones which they selected happened to be unusually wide, and, in point of fact, unnecessarily so, as it is very evident to my mind that many of these joints, particularly those near the curb, were opened by the careless ramming of the pavement during its construction. 113

(These photographs now offered in evidence, and marked "Exhibit, Eliot, Nos. 1, 2, 3, 4, Utterhart Testimony, J. A. S., ex'r.")

I also at the same time had another photograph made, representing a portion of Atlantic avenue, in the city of Brooklyn, and which plainly illustrates the character of the pavement as laid in that street, and which it will be observed shows more care in forming that joints properly, although the general character of the stone is the same as represented in the other photographs.

(Photograph offered in evidence, and marked "Exhibit, Eliot No. 5, Atlantic Avenue, J. A. S., ex'r.")

Now, by a careful inspection of each of these photographs, it must be evident to any one, it seems to me, to discover that the transverse joints are much more open than the longitudinal joints, or those at the end of the stones, and it is also evident that, owing to the various inequalities of the stone, that it would be impossible to accurately measure such joints with any degree of correctness.

Owing also to the various depressions in the surface of the stones as they lie in the pavement, it would be impossible to take correctly an imprint upon a stretched sheet of canvas. As, for example, in one of the exhibits on Myrtle avenue, east of Yates avenue, the first which I offered in evidence, the photograph shows a depression along the side of one of the stones, which I now indicate by the letter A (on No. 2), 114 which in the impressions Mr. Utterhart and his assistant made, showed to be a very large seam or joint, whereas in point of fact it is chiefly due to the stone being uneven in its top surface, and not permitting the canvas to be pressed down on to the margin of the joint. And, therefore, I maintain that the exhibit that he put in to show the character of the joints are incorrect, both as regards to his actual measurements and as regards his illustrations.

Q. 6. Have you heard and read the testimony of George W. Beardslee, taken in this case by defendants in reference to certain pavement in Basin alley, in the city of Rochester?

A. I did hear the testimony given by Mr. Beardslee, and have since read it carefully.

Q. 7. Did you examine said pavement in Rochester and cause a portion of the same to be removed and shipped to New York; and can you identify the stones so removed?

A. I did carefully examine it, and had a portion of it removed and placed in a barrel, which was closed carefully and shipped to New York; and said barrel is marked "Exhibit Basin Alley;" and I have also selected therefrom the best samples of stone that were removed by me, and have placed them in a handbarrow along with a few samples of new stone, which I obtained from a firm who were extensively engaged in laying street pavements in Rochester, of which firm Mr. Whitmore is the chief member, and who furnished me with the necessary implements and men to remove said stone.

(I now offer in evidence the stone as placed in said handbarrow, and desire it to be marked "Exhibit, Eliot, Basin Alley Stone, J. A. S., ex'r.")

Q. 8. Does the said pavement correspond or differ from the pavement described in the reissued letters patent to Charles Guidet, and give your reasons for any opinion you may express?

A. In my opinion a pavement formed of the blocks of stone which I obtained from Basin alley does differ essentially from the pave- 115 ment described in the Guidet patent, for the reason that those blocks of stone taken from Basin alley are not generally of any regular shape of any kind, but are simply broke in fragments or layers of stone as taken from the quarry, and generally smoother on the sides than on the ends. In the barrow marked "Exhibit, Basin Alley," I have placed a number of the best samples of the stones which I was able to procure from said alley, with their top surfaces, or that which was their top surface when in the pavement, so as to rest upon the bottom of the box or barrow; and in such position as is easily seen how the under side of such a pavement would look, and what kind of end joints would be formed between the stones, as compared with the side joints. (I might here remark that I found in said alley but very little of the original pavement, or such pavement as Mr. Beardslee in his testimony said was made of limestone); but I obtained the best specimens I could find, and I do not find a single sample or stone which is shaped as the stones are required to be in order to form a pavement like those described in the Guidet patent. The ends of the stones are not in the proper shape to form tight joints in the line of travel, and the sides are generally smoother than the ends. In fact, I found this to be the general rule also with all the pavements formed of the Medina sandstones, both in the cities of Rochester and Buffalo.

Q. 9. Have you examined the pavements referred to by the various witnesses who testified for the defendants in the cities of Rochester and Buffalo, and if yea, have you caused portions of the same to be removed from several of the streets and shipped to New York, and can you identify the several portions as removed by you, and will you please explain their characteristics?

A. I did have removed, on the 14th day of July last, in addition to the
portion already referred to by me as being taken from Basin alley, a
barrel of stone which contains nearly a square yard from Frank street,
in the city of Rochester; also a barrel from Brown street, Mill street,
and South St. Paul street, in the said city; and I had them all
116 carefully fastened up in said barrels and shipped to this city,
where I had them opened at the office of Mr. Harding, in the
presence of the men who helped me take up the stone, and who have
already testified concerning the contents of said barrels, when they
were put in as exhibits. I found in the several streets that the pavement
was composed of what is known as the Medina sandstone, and
that these several exhibits which I recognize here as being the same
stone as removed by me are fair representations of the pavements in
said city of Rochester—they being taken at random from the said
streets, and without reference to selecting any particular spot. I also
had samples of stones taken from the streets in the city of Buffalo, one
barrel from Erie street, one from Main street, one from Genesee street.
These samples were the same quality of stone, namely, the Medina
sandstone; but I found the stones generally not quite so regularly
shaped in Buffalo as in Rochester, with the exception of the samples
from Basin alley in the latter city. The general characteristic, however,
of all the stones, so far as pertains to their shape, is much the
same, as these several samples plainly show, that is, in stone formed
from such sandstone there is a very evident tendency to split in one
direction in a plain surface, or nearly so, while across at a right angle
to the said surface there is no such tendency; but the fact is, that it produces
a greater degree of roughness on the surface, and therefore it is
very difficult to form a smooth surface on such stone on the ends as on
the sides, and unless particular pains be taken to dress the stones to
shape, the ends will not generally be anything like as smooth as the
sides, and the fact is that by the investigation of the said pavements,
and as represented by these several exhibits, the sides of the several
stones are generally smoother than the ends, and therefore they are
very substantially different from the stones described as necessary to
form the kind of pavement claimed in the Guidet patent. I have selected
a number of stones, the best samples for paving that I could find
in the several barrels taken from the city of Rochester, and have placed
them in a handbarrow, which I have offered in evidence, and re-
117 quested the examiner to mark it "Exhibit, Eliot, Rochester
Samples, J. A. S., ex'r." These stones I have placed with their
top surfaces upon the bottom of the box, for the purpose of showing
what constitutes the bottom side of a pavement formed of such stones,
and it very plainly shows that the end joints between the stones cannot
possibly be as close as the side joints, as the stones are generally
smoother on the sides than on the ends.

Q. 10. Do these pavements in Rochester and Buffalo correspond or differ from the pavement described and claimed in the Guidet reissued patent, and give your reason for any opinion you may express?

A. As already stated by me in previous answers in this case, I do not regard it possible to form a pavement substantially like that described and claimed in the Guidet patent with such stones as are used in Rochester and Buffalo, and for the following reasons: As I understand said patent, it requires that the blocks of stones shall be in the form of a parallelopiped, the ends of which must be cut smooth, so as to form tight joints in the lines of travel on the street, and the sides must be left rugged or uneven, or purposely cut so, so that the stones when placed against each other will form open joints transversely with the street. Now, upon a careful examination of the pavements in said cities, and from the samples which I have removed from said streets, I find that the ends of the stones are not generally as smooth as the sides, and therefore the end joints will not be as close as the side joints, and a mere inspection of the stone, as represented in these several exhibits, satisfies me that such a pavement as described in the Guidet patent cannot be laid by using stones so shaped.

Q. 11. Have you prepared and placed in proper position in a handbarrow a sample of stones to represent a pavement like that described in the Guidet patent; and if yea, please produce the same and explain what it represents?

A. I have prepared such an exhibit, and I had the stones se-
118 lected or taken promiscuously from a mass or heap of stones
without making any special selection as to their shape, other than that they had been inspected once by a party whose duty it was to inspect stones for pavement laid according to the Guidet patent; and I have placed said stones side by side in the box or barrow, so that the end joints will fit close together and leave an open joint along the sides of the stone, or so as to represent the open joints transversely with the street.

This exhibit, which I have had marked "Exhibit Eliot, Guidet Pavement, J. A. S., ex'r," in my opinion is a fair representation of the blocks of stone described and claimed in said patent and also the manner of laying them together to form a pavement.

Q. 12. Have you ever witnessed the operation of inspecting and rejecting, as the case may be, the stones for forming the pavements in the city of Brooklyn; and if yea, how do those stones so rejected by the inspectors compare with the stones which you found generally in the cities of Rochester and Buffalo?

A. I have frequently witnessed the operation of inspecting and rejecting the stones in said city, and the stones which they rejected and which they termed "culls," and which required to be redressed before they could be laid in a pavement, are, in my opinion, much better samples of paving-stones for forming the Guidet pavement than any that I found in the cities of Rochester and Buffalo.

Adjourned until Wednesday at 10 o'clock.

NEW YORK, *December 22d.*

Met pursuant to adjournment.

Present, counsel as before.

Continuation of the examination of John Boyd Eliot.

119 Q. 13. Were you present in the city of Rochester on the 19th
of November last when Mr. Wittemore and his assistants removed a barrel of stones from the pavement in State street, in the presence of the counsel for the defendants, which stones were made an exhibit in this case and sent to the clerk of the court in Brooklyn; and if so, how did said pavement compare with the pavement described in the Guidet patent?

A. I was so present, and the stones in said pavement being substantially like those samples which I have placed in the barrow are, in my opinion, different in form from stones required to be used in order to make a pavement like that described in the Guidet patent; and for this and other reasons, which I have already given, I regarded that pavement as substantially different from a pavement like that described in the Guidet patent.

Q. 14. Did you also examine the portion of the pavement pointed out to you by counsel for defendants as the pavement photographed in exhibits "Defendant's Exhibit, State Street," and "Defendant's Exhibit, Irving Place, City of Rochester;" and how did said pavement compare with the Guidet patented pavement?

A. I did examine the places represented in said photographs, and had a barrel of stone removed from each of said places, and I found them to possess the same characteristics as all the rest of the Medina stone pavement in the cities of Rochester and Buffalo, and for the reasons already given by me in my previous answer, No. 10, when comparing the Rochester and Buffalo pavements, with the Guidet patent, and therefore I regard them as substantially different.

Q. 15. Have you caused a pavement to be laid in Broadway, N. Y., similar to that you found in Rochester and Buffalo; and if so, explain what you did and what was the result of said experiment; and can you produce the stones which you used in said experiment?

120 A. I did procure two large casks of paving-stones, formed of the Medina sandstone, in the city of Rochester, brought them to New York and laid them in Broadway, at the intersection of Duane street. The samples of stones were better than the general selection of such stones as I found them in the several places in the cities of Rochester and Buffalo; but I desired to ascertain what the effect would be if some of the stones were less at the bottom than at the top; that is, somewhat wedge shape; and so this portion of pavement, which amounted to about two square yards, was laid as carefully as possible, without removing the concrete which underlies the pavement in Broadway; but as said blocks are not as large as those in Broadway there was more sand placed under them than is under the Broadway blocks, in order to raise them up to the same level as the stones already laid in Broadway. I observed carefully the spots where these wedge-shaped stones were laid, and then from time to time I watched the operation of the travel over said pavement, and I found that some of those stones were driven down below the proper level of the surface of the street in a very short time, and thereby commenced forming holes in said pavement, which soon were to such a depth as that they had to be removed and the street repaved with the regular blocks. This experiment convinces me that were the blocks of less dimensions at the bottom than at the top, and where they are not of such shape as to assist in supporting one another, the smaller blocks will soon be driven down to such an extent as to loosen the others and soon cause holes, which, once partially formed, will soon wear to such a depth under the action of the travel as to require repair. When I had these stones taken up I had them placed in boxes and brought to Mr. Harding's office, at 18 Vesey street, New York, where they may now be seen. These are offered in evidence as an exhibit and are marked "Exhibit Eliot, Broadway Experiment."

Q. 15½. Please mark the Basin alley stone in handbarrow, "Exhibit Basin Alley Stone," with a *, to distinguish them from the new stone in said barrow.

A. I have done so.

121 Cross-examined by Mr. Witter:

X Q. 16. You are the same Mr. Eliot who testified for the complainants heretofore in this case, are you not?

A. I am.

X Q. 17. You are one of a class of men among which are H. B. Renwick, W. E. Hicks, E. S. Renwick, and others, who are known as professional experts, are you not?

A. I am.

X Q. 18. These gentlemen, as you understand it, receive retainers and per diem fees from the complainant or defendant in a suit, according as they are engaged by one side or the other, do they not?

A. They do.

X Q. 19. Are you, in your association with the complainant in this present suit, any exception to this practice?

A. I am not.

X Q. 20. You have been paid, or expect to, for your services in connection with the preparation of the testimony in this case on behalf of the complainant?

A. I have been paid from time to time and expect to be paid for whatever else I may do.

X Q. 21. How much time have you occupied in the service of the complainant in connection with this suit, as nearly as you can estimate it, without reference to your books?

A. If limited to this suit alone, I suppose about four weeks' working time will cover the ground. I had a good deal to do for the complainant in investigation of this subject, in a suit that was tried at Trenton some 18 months or two years ago.

X Q. 12. If not limited to this suit, how much time, and limit yourself to the services rendered in connection with the Guidet patent, original and reissue?

122 A. I should say about six or seven weeks in all; I cannot tell exactly unless I refer to my accounts.

X Q. 23. You have accompanied the complainant whenever testimony has been taken in this suit, have you not, and been present?

A. I believe so.

X Q. 24. Mention the different localities in the country you have visited in the service of the complainant, and as connected with this suit.

A. I have visited the city of Brooklyn; the city of Philadelphia; Boston, Mass.; also Cape Anne, Mass., and the cities of Rochester and Buffalo, and also Utica, Cleveland, Lockport, Medina, and Albion, and city of Washington.

X Q. 25. Then, in your estimate of times above given, I suppose you have only included hours spent in actual labor. Am I right?

A. No; I intended to include, as nearly as possible of a rough estimate, all the time that I had spent in the service of the complainant in connection with this suit.

X Q. 26. Did you ever lay any pavement with your own hands as a laborer?

A. No.

X Q. 27. Did you ever lay under contract?

A. No; I never did.

X Q. 28. Did you ever have any practical connection with the business of laying pavement; if you have, state what it was, and what pay you received.

A. I have never had any practical connection with the business, other than to observe how the business was practiced in many places.

(The words of this answer, commencing with "other than," and the rest of the answer following these words, objected to, because they are not responsive to the question.)

123 X Q. 29. You are aware, I suppose, that in the services which you have rendered in connection with this suit, it would be gratifying to your employer, the complainant, to have the alleged infringing pavement look like the patented pavement, and to have the alleged prior pavement look unlike the patented pavement?

A. I think I may answer yes to that question, although I do not remember of consulting with him about his gratification in the matter.

X Q. 30. You appear to have photographed, or had photographed the prior pavement at Cambridge, and in 28th street, and also of the Brooklyn pavement; were any photographs made of the Buffalo pavement?

(Mr. Harding, counsel for complainant, has no objection to the counsel for the defendant interrogating the witness as to photographs of other pavements given in eviden'e in his examination-in-chief, but he notifies the counsel that in so doing he makes the witness his own as to any such new testimony, and Mr. Harding will so insist on the hearing.)

A. Yes; we had several made in different places.

X Q. 31. Were any photographs made of the prior Rochester pavement?

A. I am not certain as to whether the pavement we had photographed in Rochester was prior to the invention of Mr. Guidet or not. We had two views made on East Main street, and one near the corner of State street and Main street.

X Q. 32. Were those all the views that you had made of the Rochester pavement, the three you have mentioned?

A. They were.

X Q. 33. Will you please produce them, to be marked as exhibits in this case?

124 (Mr. Harding gives the same notice, and makes no objection to the production of the exhibits. Mr. Harding suggests to the counsel for the defendant that he pay the expense of the photographs, as he wishes to use them as his evidence.)

Counsel says: I only call for the Rochester ones.

A. I have looked over all the package of photographs that were sent down to me from Mr. Field's office on yesterday, and I only find photographs of one view made in the city of Rochester; that was taken at a place on East Main street, opposite the photographer's rooms.

(Defendant's counsel states that he is content with the photograph produced, and withdraws his call for any other, and he requests the examiner to mark the said photograph "Exhibit Eliot, Rochester, East Main Street, J A. S., ex'r."

Mr. Eliot at this stage finds one other photograph of Rochester and hands it to complainant's counsel, who requests him to hand it to defendant's counsel and not to himself.

Defendant's counsel offers the same in evidence, and it is marked "Exhibit, Eliot, Rochester, corner State and Main Streets, J. A. S., ex'r.")

X Q. 34. What street is the last exhibit produced a part of, Main or State, or both?

A. It represents a portion of State street, right where the Main street crossing crosses State street, at the four corners.

Redirect:

Q. 35. Please produce all the photographs that you have referred to in your cross-examination, which you have not already produced, and state what they represent.

A. Witness produces a view of a portion of Erie street, in 125 Buffalo, marked, by request of complainant's counsel, "Exhibit, Eliot, Erie Street, Buffalo, J. A. S., ex'r." Witness produces photograph from a portion of Main street, Buffalo, marked "Exhibit Main Street, Buffalo, J. A. S., ex'r." Witness produces a photograph of a portion of the pavement at the corner of Commercial and Water street, Buffalo, where a portion of the pavement was being torn up to make repairs, showing the stones as removed from the pavement, as well as the pavement itself, on the right hand, marked "Exhibit, corner Commercial and Water Street, Buffalo, J. A. S., ex'r." Witness produces a photograph of Genessee street, near Main, in the city of Buffalo, it was marked "Exhibit Genesee Street, near Main, City of Buffalo, J. A. S., ex'r." Witness produces a photograph of Main street, Buffalo, opposite the Tifft House, at a place referred to by one of the witnesses for the defendants, marked "Exhibit Tifft House, Buffalo, J. A. S., ex'r." Witness says: That is all.

Q. 36. Have you paid any attention to the subject of practical laying of pavements; if so, to what extent?

(Objected to as already answered.)

A. I have been frequently called upon to make examinations by practical observation of various kind of pavements, as concrete, and wood, and stone, and I have seen stone pavements laid at different times in various cities; as for example, I watched at different times the laying of the pavement in Broadway, New York, and have frequently observed the laying of similar pavements in Brooklyn, and also the pavements laid of the Medina sandstone, in the cities of Rochester and Buffalo, and Cleveland, Ohio, and Lockport, New York, and consider myself practically familiar with the method of laying such pavements.

Q. 37. What attention have you paid to the operation of laying the pavement in Rochester and Buffalo, and what attention have you paid to the subject of the quarrying such stone and other stone used for pavements?

126 (Objected to because it is too late to attempt to show the competency of this witness on redirect examination, and the last answer is objected to as in part irresponsible and sporadic.)

A. I have oftentimes stood beside the workmen while they were laying the pavements both in the cities of Rochester and Buffalo. Have seen them dressing the stone in the quarries, and also on the work, and I consider myself sufficiently familiar with the operation to do the work myself, as well as any practical paver, if I desire to engage in such labor.

Q. 38. Have your relations to this case been the same or different from other cases in which you have been called as an expert witness?

(Same objections.)

A. No; they are exactly the same.

Q. 39. In how many patent cases have you been called as an expert witness?

(Same objections.)

A. It is impossible for me now to tell in how many cases I have been employed as an expert, but I should think it would amount to at least over a hundred in the last 18 or 20 years.

Re-cross.

X Q. 40. How many days, referring to your answer to question 36, have you witnessed the operation of laying pavement in Rochester and Buffalo, and I mean the same sort of days that you have referred to in your cross-examination when estimating the time devoted to this case?

A. I suppose some two or three days in all; that is, that I gave special attention to it.

Adjourned to Dec. 28, 1875, at 12 o'clock, m. Same place.

127 *Testimony taken on behalf of defendant, June 5, 1874.*

John Stimson, a witness called on behalf of the defendant, being duly sworn, testified, as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is John Stimson; age, 70 next October; residence, Boston; occupation, stone business; our quarry is in Rockport, Mass.

Q. 2. How long have you been interested in that stone quarry?

A. About 36 years.

Q. 3. Have you furnished stone blocks for use in the city of Brooklyn from your quarry; and if so, for what streets in said city?

A. We have furnished the stone delivered on the wharves in said city, but I can't say for what streets; they were delivered to Mr. Crawford, of the Scrimshaw Pavement Company.

Q. 4. Please describe the character of those stones.

A. Well, there was two kinds; there was one lot that was to be from 8 to 12 inches in length and from three and one-half to five inches in width, and from 7 to 8 inches in depth; the other lot was to be from 8 to 15 inches in length, the same as the other in width, and from 7 to 8 inches in depth.

Q. 5. State further as to their character, as to their sides and ends, in respect to smoothness and roughness.

A. All stones that are merely split, we call rough split stone;
128 dressed stone we call hammered, and hammering stone makes it
dressed; sometimes, where there are bunches on the sides, we
point them down.

Q. 6. Same question, repeated.

A. Well, I suppose you want to know how we make them; we take a block of stone——

Q. 7. Mr. Stimson, I want to know from you what was the character of the sides and ends of the stone which you sold to Mr. Crawford, as to roughness or smoothness?

A. We split them as square as we could, rough, without any dressing. That stone (pointing to Defendant's Exhibit, Big Stone No. 2) never had a tool touch it except to split it.

Q. 8. Were any of these stones chamfered off, or beveled off on the broad edge, or smoothed on the narrow side?

A. No; we never chamfered them off in the world; we never had a call for them; no, we get them as square as we could.

Q. 9. State specifically as to smoothing the ends; was any process employed by you for smoothing the ends?

A. When we split square there was none; when they didn't, we got a fitting hammer and broke off what projections stuck out.

Q. 10. Was there any dressing, hammering, or smoothing of the narrow sides done?

A. No; we cut the sides and the ends all alike.

Q. 11. Have you made stones for Mr. Guidet; and, if so, for what purpose?

A. I have for Mr. Guidet.

Q. 12. When?

(Mr. Harding objects to any testimony of this witness which may go to the novelty of the invention, as not set up in the answer, so as to entitle it to be introduced, and this objection, by agreement, extends to all his testimony, without being repeated.)

129 A. I should think it was about four years ago when he paved Broadway in New York City.

Q. 13. Was it used on Broadway, New York?

A. I am very positive it was, for I saw it laying there.

Q. 14. Mr. Stimpson, when did you first become acquainted with the kind of stone for pavement you furnished to Mr. Guidet?

(Objected to on same grounds as before and as immaterial.)

A. Well, I should think about twenty years ago I furnished Horace Beales, and James & Co., when they first began to lay stone on track of horse railroads. About the same time I furnished a good many for Charlestown and Cambridge, Mass., and Boston, Mass.

Q. 15. Describe particularly the stone blocks which you made about twenty years ago?

(Objected to as before.)

A. Well, they were the same as these (referring to Exhibits Big Stone, 1 and 2) with the exception of giving a little more lenity in the depth; that is, they were not so particular in the depth.

Q. 16. In all other particulars they were the same?

(Objected to for vagueness.)

A. In all other particulars they were the same as I furnished Mr. Guidet, and Mr. Crawford, too.

(Answer objected to as volunteer as to Mr. Crawford.)

Q. 17. How and where were these stones used which you made twenty years ago?

(Objected to as before.)

130 A. They were laid mostly from Cambridge College to Boston, on one-horse railroad line, and from Charlestown to Boston and Chelsea; most of the way; and then most up Causeway street to College Place, I think.

Q. 18. Describe how they were laid?

(Objected to as before.)

A. As the railroad ran up the street, they laid one snug right up to the track, so as to break joints, every other one being longer than the other, so as to break joints.

Q. 19. Do you mean that each stone was longer than the other?

A. No, sir.

Q. 20. State how the pavements were laid.

(Same objection.)

A. They were laid crosswise to the street, one course, one stone from the rail each side—headers.

Q. 21. Do you mean the longest side of the stone across the street?

(Objected to as before.)

A. It lay lengthwise across the street.

(Above question withdrawn.)

Q. 22. Please proceed with your description of how they were laid in the street.

A. Well, they were laid alternately on each side of the track; one short one and one long one, all the way up to Chelsea.

Q. 23. Which side of the stone; the long or short, laid transverse or across the line of the street?

131 (Objected to as witness has not testified that the stones were laid across the street.)

Q. 24. Were they laid across the street?

A. They were laid along the inside and side of the rail, four courses; some were laid so, and some I think were not. I don't know as I ever saw them laid the entire width of the street.

(Mr. Harding insists that a remark of the witness about pebbles be taken down.

Mr. De Witt complains that Mr. Harding is constantly interrupting his direct examination, for the purpose of interpolating on the minutes matters of a frivolous character.)

The examiner asks witness if he said anything about pebbles.

Witness says: "I was asked as to the manner of laying these stones, and I said that they filled in pebbles the back side of these stones, as part of the street."

(Mr. Harding requests the examiner to ask the witness if he has not made another remark which he has not taken down.

Counsel for defendant objects to above as disorderly and impertinent.)

Witness says in answer to question by examiner, "I am not aware that I did."

Q. 25. Were the stones last spoken of in your examination by me, so laid as to constitute a pavement of that portion of the street lying between the railroad tracks? Please answer directly.

(Objected to.)

132 A. Those kind of stones didn't fully fill between the track. In many instances the track is filled up with square paving, the same as these (referring to Exhibit Big Stones, Nos. 1 and 2), except not so long, and they are seven inches deep.

Q. 26. What fractional portion of the street was paved by these stones in the manner you described, as near as you can state?

A. It depends on the width of the street, and whether there is a double track—some would take up nearly half, and some not so much, where the streets were wider—a quarter of the street.

Q. 27. What was the size of the joints, transverse to the streets, and those running longitudinally or parallel with the street?

(Objected to as before.)

A. I never considered that there was much difference—about the same; they would average about half an inch, according to the roughness.

Q. 28. Can you state positively that this, the pavement that you speak of, was laid more than eighteen years ago?

(Objected to.)

A. I think it was; but I am positive that it was more than fifteen years; I cannot say as to all of it; they commenced about twenty-three years ago and laid it for five or six years; perhaps a thousand tons a year.

Q. 29. Did you furnish this stone for anybody else more than seven years ago?

(Same objection.)

A. I guess not within seven years.

(Objected to by defendant's counsel as irresponsive.)

133 Q. 30. I spoke of before seven years ago, but as Mr. Harding insists upon your answer being down, I will ask whether you have not furnished it, or whether you mean to say you have not furnished it to Mr. Guidet or Mr. Crawford within seven years?

(Objected to.)

A. Yes; I have furnished it to them within seven years.

Q. 31. To how many different parties did you furnish this stone prior to seven years ago?

(Same objection.)

I should think as many as eight, certain; perhaps ten or twelve.

Q. 32. Have you furnished the same style of stone for use to any city in this country prior to the 12th day of January, 1869?

(Objected to.)

A. Yes, I furnished a lot of stone, somewhat like these, to Gore & Smith; they were laid in the city of New York. I think there was not any of them over a foot long, but the same breadth and the same depth.

Q. 33. With the exception of the length, were they like Nos. 1 and 2?

(Same objection.)

A. They were.

Q. 34. When was that?

A. I think it was eight or nine years ago.

Q. 35. Do you know whether they were laid as a street pavement?

134 A. Can a man know unless he sees it with his eyes? Mr. Leland told me about it last night.

(Answer objected to as to Mr. Leland's conversation.)

Q. 36. Well, they were made and delivered by you in New York for that purpose, were they not?

(Objected to as before.)

A. Yes, they were.

Cross-examination waived.

Counsel for complainant gives notice that he will move to suppress this deposition, on the ground before stated in his objection.

JOHN STIMSON.

Subscribed and sworn to before me this 5th day of June, 1874.

Adjourned to Friday and Saturday, June 12th and 13th, 1874, at 11 o'clock a. m.

BROOKLYN, *June 12th*, 1874—11 a. m.

Present, counsel as before.

Adjourned to Wednesday, June 17th, 1874, at 11 a. m.

BROOKLYN, *June 17th*, 1874—11 a. m.

Adjourned to Friday, June 26th, 1874, at 11 a. m.

135 BROOKLYN, *Wednesday, July* 1, 1874—11 o'clock a. m.

Evidence on the part of the defense continued.

Counsel present, George Harding and Mr. Fields; Corporation Counsel DeWitt and Mr. J. H. Knaebel.

Testimony was received as follows:

HORACE LEELAND, sworn and examined by Mr. DEWITT:

Q. 1. What is your business?

A. Variety of business—one kind of business, I act as agent for the Rockport Granite Co. and Stimson Granite Co.

Q. 2. How long have you been connected with either of those stone companies?

A. I think about four years.

Q. 3. Have you seen the pavement laid on Myrtle avenue, in Brooklyn?

A. Yes, sir.

Q. 4. And on Atlantic and Lafayette avenues?

A. More or less of it.

Q. 5. Did you have any business connection with the laying of the pavements on Atlantic and Lafayette avenues?

A. Made the sale of blocks to Mr. Crawford.

Q. 6. Have you seen a pavement on Twenty-eighth street, in the city of New York?

A. I saw the blocks before they were laid and since they were laid.

Q. 7. From what point?

A. All the way from Fifth avenue to First avenue.

Q. 8. What comparison did or does the pavement on Twenty-eighth street, to which you have alluded, bear with the pavement on Atlantic, Lafayette, and Myrtle avenues, in the city of Brooklyn?

136 A. Different kinds of blocks on Twenty-eighth street—some Belgian, some oblong granite, and some eight by twelve (8x12.)

Q. 9. Describe the pavement on Twenty-eighth street, New York.

A. Different kinds of blocks there—some without Weehawken or Belgian blocks, some granite blocks, from eight to twenty inches long, four inches wide (from three to four.)

Q. 10. How are the blocks laid with reference to the running of the street?

A. They are laid there both crosswise of the street, and also lengthwise—some of them.

Q. 11. Are there any of the—are the stones on Twenty-eighth street, over any considerable portion of that street, laid with respect to position and the width of joints precisely similar to those laid on Atlantic, Lafayette, and Myrtle avenues, in the city of Brooklyn?

(Objected to as leading.)

A. I should think about the same.

Q. 12. About the same?

A. About the same from my observation.

Q. 13. State when you first saw that portion of the pavement on Twenty-eighth street, which you say was about the same as that on the avenues in Brooklyn mentioned.

A. I think the street was mostly paved in June; some portion of it in May—the last of May, 1866.

Cross-examination waived.

HORACE LEELAND.

NOTE.—It was here stipulated that the commissioner may sign the names of the witnesses upon transcription of the notes by the stenographer.

137 WILLIAM MOGK, sworn.

Examined by Mr. DE WITT:

Q. 1. What is your business?

A. Paver and contractor.

Q. 2. Did you lay a stone pavement at any time in South street, in the city of New York?

A. I did.

Q. 3. When?

A. 1865.

Q. 4. Have you been engaged laying a stone pavement on Myrtle avenue, in the city of Brooklyn, between Fulton street and Bedford avenue, and Broadway?

A. Yes.

Q. 5. How do these two pavements compare?

A. Yes; only the stones is larger. The Myrtle avenue stones is larger than South street.

Q. 6. Do you mean that they are alike in every respect, except as to size of the stones?

A. Yes.

(Objected to as leading.)

Q. 7. By your answer yes, do you mean it makes no difference in the stone if they are deeper or longer?

A. The stone, all I paved, pretty near, the one is little shorter and one is little longer.

Q. 8. I want to ask you this question, which I would like to have you answer me directly: Are these two pavements alike except as to the size of the stone?

(Objected to as leading.)

A. Yes.

Q. 9. How long, about, was the stone laid in South street, in 1865?

A. The stone run from six, seven, eight inches in length.

Q. 10. How wide?

A. From three and a half to four; might be four and a half.

138 Q. 11. How deep?

A. Some of them was six, seven; might be some of them eight.

Q. 12. Has that pavement in South street, New York, been examined by two officers of the city government?

A. Yes.

Q. 13. Name them.

A. I could not tell the inspector; I believe it was Dr. Rollins.

Q. 14. Mr. DeMerritt went over to see that pavement?

A. Yes.

Q. 15. Did Mr. DeMerritt go over to see that pavement?

A. Yes; he did.

Q. 16. At what points—where on South street was this pavement laid by you?

A. From Oliver up to Market.

Q. 17. From where?

A. From Oliver up to Market street.

Q. 18. It is still there, is it?

A. Yes, sir.

Cross-examination waived.

WILLIAM MOGK.

Mr. JOHN BOOTH sworn.

Examined by Mr. DE WITT:

Q. 1. What is your full name?

A. John Booth.

Q. 2. You reside where?

A. 83 Warren street, Jersey City.

Q. 3. What is your business?

A. Manufacturer and dealer in granite.

Q. 4. Have you been engaged in laying stone pavements in Brooklyn; and, if so, where and when?

A. I haven't been engaged in laying stone pavements. We simply supply the stones for contractors.

139 Q. When and for what streets have you supplied?

A. For Henry street, in Brooklyn; Myrtle avenue, in Brooklyn; Atlantic avenue and South Broad street, Newark.

Q. 6. The stone which you furnished for Brooklyn is that which constitutes the pavements alluded to by the witnesses in this case?

(Objected to.)

A. I haven't heard the witnesses.

Q. 7. Then please describe the points of the respective streets mentioned.

A. Henry street is laid with blocks.

Q. 8. I didn't ask you that.

A. Let me understand the question, will you, please?

Q. 9. I merely want to locate the portions of these streets upon which lay the stone which you furnished. Can you do that for me?

A. We furnished stones for Henry street, from Fulton street to Pierrepont street.

Q. 10. Yes, and Myrtle avenue?

A. Well, they have been laid several places, of course; laid in different parts in Myrtle avenue, from Fulton avenue to Broadway.

Q. 11. Well, did you furnish anything for Lafayette avenue?

A. We did not.

Q. 12. For Atlantic street?

A. For Atlantic street we did from Henry to Bond, all but few cargoes on the south side.

Q. 13. Describe how these stones , if you know. I will ask you, first, whether you know; do you know how these stones were prepared for use? First, whether you know or not.

A. Yes.

Q. 14. Describe how these were prepared; what was done first,
140 second done, third done, and so on, embracing every step that
was taken in quarrying the stone out and preparing it for use, if
you can.

A. They are first quarried in large pieces, then drilled down to sizes that enables the paving makers to split them down with a hammer into sizes pretty near what the blocks are required to be made.

Q. 15. In the preparation of these stones was anything done with a view to making the narrow and smooth—narrow side smooth, and the broad side rough?

A. No.

(Objected to, as leading.)

Q. 16. Well, I will ask you, then, what was done in the preparation of these stones with reference to the condition of the surfaces of either the broad sides or the narrow sides they all have?

A. We instruct our men to make them as flat in the sides and as square in the joints as they can. When I speak of the joints I mean the narrow ends.

Q. 17. Did you receive any orders or instructions from anybody to make the stone smoother on the end or narrow edges than in the sides?

A. No.

Q. 18. State whether or not any more attention was given to, or any more efforts made in, making the end or narrow edges of the stones smooth than there was in making the sides smooth.

(Objected to.)

A. There are more efforts made, necessarily, with the sides of them than with the edges of blocks, such as is laid in Myrtle avenue.

Q. 19. I understand you to say there are more efforts made to smooth the broadsides of the stones than the narrow sides?

(Objected to.)

141 A. It requires more effort to make one as smooth as the other.

Q. 20. Is any effort made to produce a greater condition of smoothness on the narrow edge or sides than on the broad sides?

A. No.

(Objected to, as leading.)

Q. 21. Was any effort made to have the sides of the blocks rough or uneven?

A. No; the effort is to get them as clean as we can.

Q. 22. How came these blocks to be rough or even?

A. Blocks are—have a tendency to have more projections on the broadsides, naturally, than they would have on the ends, on account of the paving makers when they are trimming the blocks. Take a block, for example, four inches wide, eight or nine inches deep, and twelve inches long; the blocks are trimmed or finished off with a hammer, around all sides. In such a block the paving makers or trimmers have to trim it in the one side four and a half inches from the edge if it is nine inches deep, and when he turns it up on the other side he has four and a half inches that way to take it down.

Q. 23. Well, then, as I understand you, the comparative condition of the various surfaces of these stones as to roughness or evenness is dependent upon the extent of this trimming?

A. I should say so.

(Objected to, as leading.)

Witness. I wish to add why the blocks would naturally come out cleaner on the ends than they would on the sides; along the end of the block, when turned on its flat side, the paving cutter has only four inches of surface to knock off the projections or spauls, and that 142 is two inches to the centre, and the hammer is likely to knock off that spaul from a point beyond the centre. Turn over the block and then there is only other two inches to knock off.

Q. 24. Mr. Booth, have you ever prepared stones for Belgian pavement?

A. We have prepared stones for what is called granite Belgian pavement.

Q. 25. Can you call my attention to one or two samples of that pavement?

A. They are laid in Second avenue, from Ninety-sixth or Eighty-sixth to One hundred and twenty-fifth street; they are also laid in the whole of One hundred and twenty-fifth street, with the exception of the car tracks.

Q. 26. When did you prepare those stones?

A. About three years ago—two and a half or three years ago.

Q. 27. In what way were they prepared?

A. Just in the same way as we prepared the stones that we sent to Brooklyn; the dimensions are different.

Q. 28. I speak of the preparation.

A. No difference.

Q. 29. Does your last answer cover all that was done to these Belgian blocks from the quarry to their use as a pavement?

A. Yes; I think it does, without entering into very minute details; substantially it does.

Q. 30. Did you exercise greater or less care in the preparation of the stones you furnished for the pavements you have mentioned in Brooklyn than for this Belgian pavement; or any other kind of pavement of a similar block and character for which you have furnished stones for?

A. Substantially, no.

Q. 31. By that answer you mean that the care was substantially the same, or that it was less or greater?

143 A. We might take greater care with blocks of the same dimensions, according to the particularity of the people with whom we were dealing.

Q. 32. I ask you generally, as to the amount of care in preparation with reference to these Brooklyn stones compared with other stones?

A. Well, there are some streets even in Brooklyn that the stones might be even rougher than others.

Q. 33. Well, then, you cannot give me a general answer, Mr. Booth. When did you first see the kind of pavement which is laid on Lafayette avenue, Atlantic avenue, Myrtle avenue, at the points mentioned—when did you first see pavement of that kind?

WITNESS. In this country?

MR. DEWITT. I don't limit it at all—anywhere.

(Mr. Harding objects to any testimony except in the United States; and, also, as to any testimony as to any use not mentioned in the answer.)

Q. 34. Anywhere?

A. I have seen it in Aberdeen some twenty years ago; at least, haven't seen it laid, but seen the surface of it.

Q. 35. When did you next see it; when and where did you next see it?

A. In Broadway, New York.

(Objected to the question and answer, so far as to any use.)

WITNESS. Fall of 1870, that is, understand, the surface of the pavement.

Q. 36. When did you next see it?

A. Next in South Fifth avenue.

Q. 37. What city?

A. New York.

Q. 38. When next?

A. I saw it laid in Church street, New York.

144 Q. 39. Next?

A. I have seen it before in Fulton avenue, in Brooklyn, before either of these last two.

Q. 40. Well, then again?

A. Henry street, Brooklyn.

Q. 41. That is one of the streets I mentioned; where else have you seen it, if at all, that kind of pavement?

A. In Myrtle avenue.

Q. 42. Where else?

A. In the city of Philadelphia.

Q. 43. At what points in the city of Philadelphia?

A. I have seen it in Delaware avenue, foot of Pine street.

(Objected to any testimony as to matter not set up in the papers.)

Q. 44. Over how great a distance of Delaware avenue, about?

A. Three or four blocks, I have seen it on.

Q. 45. Describe, if you please, the pavement which you have seen in Delaware avenue; the size of the stone; the attitude in which the stone is laid, and the relative width of various joints.

(Objected to.)

A. The pavement there is substantially the same as that on Henry street in Brooklyn, with the exception that the stone is a little smaller; it is a little shorter.

Q. 46. Well, do you mean to indicate there is any difference between the Henry street pavement and the pavement on Atlantic, Lafayette, and Myrtle avenues?

A. The stones in Henry street are a little smaller than they are in those other streets.

145 Q. 47. In all the other respects to which my question calls your attention is the pavement on Delaware avenue, in Philadelphia, of which you have spoken, like that on the streets mentioned, in the city of Brooklyn?

A. The same.

(Objected to, as leading.)

Q. 48. Now, won't you more particularly describe the pavement on Delaware avenue, in Philadelphia; first, the character of the blocks?

A. So far as I can judge of the appearance of the street the blocks were made similar; the dimensions of the blocks are from six to twelve inches in length—might be one shorter, occasionally, and one longer—from three and a half inches wide generally.

Q. 49. What as to the joints?

A. The joints, I should think, were substantially the same.

Q. 50. Do you mean the same as those on Atlantic, Lafayette, and Myrtle avenues, and Henry street?

(Objected to, as leading.)

A. They appear to be a little closer in the ends.

Q. 51. They appear to be a little closer in the ends—where?

A. Delaware avenue.

Q. 52. Is the longer portion of the stone laid crosswise or lengthwise of the street in Delaware avenue?

A. Transversely to the street—across the street.

Q. 53. Please state the time when you saw this pavement on Delaware avenue; and in company with whom, if anybody.

A. About two weeks ago.

Q. 54. And in company with whom, if anybody?

A. Chas. Ferguson and Daniel McNickle, Philadelphia.

Q. 55. Did you see or examine any other pavement of the kind in the city of Philadelphia at this time?

A. Yes.

146 Q. 56. In the same company?

A. In company with Ferguson, and part of it with McNickle, too.

Q. 57. Where?

A. In Chestnut street, near Ninth.

Q. 58. What were the character of the blocks laid on that portion of Chestnut street?

A. Substantially as that laid in Delaware avenue.

Q. 59. Will you be a little more particular about it, and describe what it is, as minutely as you can—we haven't seen it—first, the character and size of the block.

A. The character of the blocks are about the same as I have already described.

Q. 60. Stone blocks?

A. Stone blocks.

Q. 61. Of what length?

A. Well, they would run from seven to fourteen inches in length.

Q. 62. How wide?

A. From three to four and a half or five inches.

Q. 63. How deep?

A. I only examined the surface; I didn't take the blocks out.

Q. 64. What was their attitude with reference to the run of the street.

A. They were laid transversely with the street.

Q. 65. The longer line of the stone running crosswise of the street?

A. Running crosswise of the street.

Q. 66. State as to the character and dimensions of the joints.

A. The end joints?

Q. 67. Did you measure the joints?

A. Yes; made a measurement as near as one could.

Q. 68. State how the joints were.

A. The joints were, if anything, closer in the ends than they were in the sides.

147 Q. 69. Can you give some approximate idea of the joints?

A. The joints would run from an eighth of an inch to an inch and a quarter; that is the extreme, as the great bulk of them would run from twenty-five to seventy-five hundredths of an inch.

Q. 70. State first of the short joints.

A. The short joints would run from about thirty-seven hundredths up to an inch.

Q. 71. Now of the long joints?

A. They would be a little wider.

Q. 72. Have you seen this pavement anywhere else, Mr. Booth? I don't know whether you have been anywhere else or not.

A. Saw it at Chestnut street bridge, and a number of other different places; it is all over.

(Objected to the statement of the witness unless he states where he saw it.)

Q. 73. Have you examined any pavement in New York of this kind?

WITNESS. In New York?

Mr. DE WITT. Yes; either in South street or Twenty-eighth street, or elsewhere.

A. I have seen a pavement of that class laid in South street, near Catharine Ferry; didn't see the pavement laid.

Q. 74. You mean you saw it actually down there?

A. Yes; seen it several times passing over.

Q. 75. Do you know whether or not it is the pavement with which Mr. Mogk was connected?

A. I have heard Mr. Mogk say he laid it.

(Objected to.)

Q. 76. Who called your attention to it?

A. Mr. McNamee (Freel & McNamee) called my attention to it.

148 (Objected to.)

Q. 77. Was Mogk there?

A. Mogk called my attention to it, too.

Q. 78. Describe the character of that pavement.

A. Substantially the same as the Philadelphia pavement; upon the surface of the blocks about the same; perhaps a little shorter.

Q. 79. The joints?

A. I should say the joints—these are as fully as close as I have seen, both ends and sides.

Q. 80. Do you know Mr. Grant—William Grant?

A. Yes.

Q. 81. What, if any, connection did he have in the manufacture of blocks used in Brooklyn on the streets named?

A. He simply made them; he has been trimming on the streets here—trimming those blocks that were too rough or broken, like as that.

Q. 82. Have you got any memorandum of your measurement of those joints, etc., etc., in Philadelphia in your possession now?

A. I took a measurement of them.

Q. 83. Have you got it?

A. Yes, I believe so.

(Witness produces the paper in question.)

Q. 84. Made at the time?

A. Made at the time, and copied out since.

Q. 85. Made at the time, in Philadelphia, on the spot?

A. On the spot.

(Mr. De Witt reserves the offering of the paper in evidence.)

Cross-examined by Mr. **Harding**:

Q. 86. Did you make this table yourself?

149 A. It wasn't copied by me.

Q. 87. Who made it up?

A. Charles Furguson wrote it.

Q. 88. Who made it up?

A. We made it up together.

Q. 89. Made it up for the first time in this form together?

A. Yes, sir.

Q. 90. Who did the writing in making up the table?

A. Mr. Furguson.

Q. 91. Was he with you when you measured them?

A. Yes, sir.

Q. 92. Who is Charles Furguson?

A. He is in the employment of the Pennsylvania Railroad Company.

(Mr. Harding is understood as having objected in due season to the admissibility of any evidence not mentioned in the answer.

Mr. Harding states if the original measurements of this pavement are produced at any time he shall then claim the right to cross-examine this witness upon the whole subject-matter as to use referred to in the table.)

Q. 93. Can you fix, definitely, the streets in Brooklyn which are paved with blocks furnished by you so that a person can go and examine the pavements?

A. Yes, sir.

Q. 94. Just fix it.

A. Henry street, south side of Atlantic avenue, from Henry to Bond; we didn't furnish the whole of the blocks; the greater proportion of them.

Q. 95. Go on.

A. The blocks came here mixed.

Q. 96. I want you to give me the most precise description.

150 A. I have given you the most precise description I can give.

Q. 97. Can you tell your blocks there when you see them?

A. Tell a good many of them; tell the difference between Connecticut and Cape Ann granite.

Q. 98. Yours is which?

A. Connecticut; we have sent blocks from Maine as well.

Q. 99. Can you tell your Maine blocks from Cape Ann blocks?

A. Yes, sir.

Q. 100. What proportion of the pavement on Myrtle avenue did you furnish blocks for?

A. Pretty difficult to answer that question.

Q. 101. Give as near as you can.

A. They are all mixed.

Q. 102. What proportion of those blocks did you furnish?

A. That I could not tell.

Q. 103. Have you furnished one-tenth?

A. I think we have.

Q. 104. Will you swear that you have?

A. I think I can safely say we have.

Q. 105. Did you see them laid; and, if so, how many?

A. Some of them I have seen laid.

Q. 106. How many have you seen laid?

A. I couldn't count them.

Q. 107. Have you seen one-quarter of what you furnished laid?

A. I could not say as to that; I have seen the men laying them.

Q. 108. When did you first see them blocks laid?

A. I paid particular attention to the manner of laying them; I could not fix the exact date.

Q. 109. When did you last see them laid—in the act of laying them?

151 A. Couldn't even tell you that just now.

Q. 110. When did you begin to furnish these blocks?

A. I presume about the first of August, last year—July or August.

Q. 111. What year?

A. '73.

Q. 112. When did you see any one of the pavements which you have alluded to in your testimony in act of laying?

A. I have seen them laying Henry street; I couldn't fix the exact date.

Q. 113. Can you fix the part of Henry street which you saw laid?

A. Yes.

Q. 114. Fix it exactly; where is it?

A. At Pierrepont street, in Henry, near Pierrepont.

Q. 115. Which side of Pierrepont?

A. North side.

Q. 116. Beyond the north of *of* Pierrepont, how much of that block did you see laid?

A. I cannot answer that.

Q. 117. How many courses did you see laid?

A. I could not say.

Q. 118. Did you ever see ten courses?

A. I could not say.

Q. 119. How came you to see them laid?

A. I was supplying the stones.

Q. 120. Where the people laying them—had they dressing-hammers?

A. I believe some of them had hammers.

Q. 121. Do you know whether they had or not?

A. Some of them had.

Q. 122. Where have you pavements besides those in Brooklyn to which you have furnished stone, and to which you have testified?

A. South Broad street, Newark, and South High street.

Q. 123. Did you furnish the blocks for them?

152 A. Yes, sir; all of them.

Q. 124. Are you furnishing blocks to parties laying these pavements; is that your business?

A. Yes, sir.

Q. 125. Have you a contract for furnishing blocks to any one in Brooklyn?

A. None just now.

Q. 126. Have you had them?

A. We have no written contracts.

Q. 127. Well, oral contracts?

A. Yes.

Q. 128. I think you stated this was your business—to furnish blocks for pavements?

A. Yes.

Q. 129. Do you run or lease quarries, or interested with any person in them?

A. I am interested with my brother, who runs a quarry in Falk's Island, Maine.

Q. 130. You never saw pavements laid in Philadelphia or New York—in act of laying them?

A. I have seen them laying South Fifth avenue.

Q. 131. That is the only place, is it?

A. I have seen them laying, too, in Newark.

Q. 132. You have stated that. When was it you saw the pavement laid in New York, and when in Newark—Fifth avenue, in New York?

A. About the time they commenced it.

Q. 133. When was that?

A. I cannot say.

Q. 134. Was it six years ago?

A. It wasn't six years ago.

Q. 135. Was it two years ago?

A. I think it was in the fall of 1872.

Q. 136. Mr. Guidet was laying it, was he?

A. I understood so.

Q. 137. And you never saw any of the pavement laid in Philadelphia?

153 A. No, sir.

Redirect by Mr. De Witt:

Q. 138. Is it customary to use dressing-hammers in the laying of stone pavements?

(Objected to, as the witness doesn't appear to be an expert in the laying of pavements.)

A. The pavers generally have dressing-hammers; they call them dressing-hammers.

Q. 139. Those are the kind of hammers that you spoke of in your cross-examination?

A. In Maine we use a different kind of hammer than those used here. The pavers here use a different kind of hammer than the one we use in Maine. Every man has his own way of doing his work. The men that we employ in making those blocks are particular Scotchmen. They use a different tool—a different kind of hammer from what is used by others, as a rule.

Q. 140. Are dressing-hammers used in laying Belgian pavements?

A. They carry them along with them when they are laying pavements. There may be two or three hammers among a dozen men, so far as I have seen.

Q. 141. Then they are used?

A. They don't use them much. More used to split the blocks in two.

Q. 142. You speak of men using dressing-hammers in laying these pavements in Brooklyn. Now I want to know whether the use of these hammers isn't common in the laying of any stone pavement?

A. Certainly.

(Objected to.)

Q. 143. And your answer applies to Belgian pavements?

A. Yes, sir. Trimming-hammers is a better name for it.

154 Q. 144. Generally, what do you use those hammers for?

A. The hammer that I refer to, for trimming the blocks.

Q. 145. Trimming them to what extent?

A. To bring them down to their right size, and make the blocks true take the bunches off of them.

Q. 146. Are you talking about the quarry or street?

A. The quarry. The men comes up from the quarry to work on the street. They bring their tools with them.

By Mr. **Harding**:

Q. 147. When he finds any bunches on them he knocks them off?

A. From the stone thrown out; that have been broken in transportation or handling.

Q. 148. How many courses of pavements such as you have spoken of have you seen laid?

A. That I could not tell. I could not fix that, neither could any man, I think, unless he was to count them.

Q. 149. To what extent have you seen the Belgian pavement laid; how many courses?

A. Could not answer that question.

Q. 150. Where did you ever see any Belgian pavement laid?

A. I saw that being laid down at the Wallabout there.

Q. 151. Where?

A. Wallabout, in Brooklyn.

Q. 152. When?

A. Probably about three months ago.

Q. 153. That the first Belgian pavement you ever saw laid?

A. No.

Q. 154. Where was the first Belgian pavement?

A. In Second avenue.

Q. 155. When?

A. '71 or '72. I am not very clear in dates.

155 Q. 156. Did they use the stone hammer to dress the stone there as they laid it? When you saw them lay these Belgian pavements did you see the men use the hammers to dress the stones as they laid them?

A. Very likely I have seen it.

Q. 157. Can you swear whether you saw them use the stone hammer to dress the stone as they laid them?

A. I cannot swear I have seen them using them. I have seen them have hammers with them.

Q. 158. Can you swear you ever saw anybody use a stone hammer to lay blocks with, in laying?

A. I have seen them using them.

Q. 159. Where?

A. I have seen them in Myrtle avenue. I cannot say I have seen them dressing.

Q. 160. Anywhere to dress the stone in laying them?

A. Not in the street.

JOHN BOOTH.

WM. GRANT sworn.

Examined by Mr. KNAEBEL:

Q. 1. Where do you reside?

A. Millstone Point, Connecticut.

Q. 2. What is your business?

A. Paver and block-maker.

Q. 3. How long have you been engaged in the business of making paving-blocks?

A. About twenty-four years.

Q. 4. At what place?

A. I have been engaged in Scotland, Russia, and Connecticut.

Q. 5. Of what materials have you made paving-blocks?

A. Out of granite, and what they call trap-stone.

Q. 6. How long have you been engaged in business at Millstone Point?

A. I went there in March, '73.

156 Q. 7. In whose employ?

A. William Booth.

Q. 8. William is a brother of John Booth, the witness?

A. Yes, sir.

Q. 9. Have you seen any of the pavement in the city of Brooklyn constructed of stone blocks furnished from the quarry in which you work?

A. Yes.

(Objected to.)

Q. 10. Which street?

A. On Myrtle avenue.

Q. 11. Between what streets?

A. I don't know between which streets; I am not very well acquainted here; I was here about three weeks overhauling stones which were rejected.

Q. 12. Is the pavement to which you refer completed—or in course of construction—the pavement in Brooklyn to which you refer to in Myrtle avenue finished?

A. Finished.

Q. 13. Who was the contractor for that pavement?

A. It was reported to be McNamee and Freeland.

(Objected to.)

Q. 14. Who employed you to overhaul the stones on that pavement?

A. William Booth.

Q. 15. Who supervised you here?

A. Mr. McNamee.

Q. 16. Of what material—of what kind of stone are the blocks constituting the Myrtle avenue pavement made?

A. Granite—the stone that I overhauled were granite.

Q. 17. Do you know of what kind of stone blocks the pavement in Myrtle avenue, on which you worked, is generally constructed?

A. Granite.

157 Q. 18. Do you know about how many blocks or squares of streets that pavement crosses?

A. I don't know.

Q. 19. Describe how the stones furnished from your quarry towards the construction of that pavement were prepared, commencing with their first step in their manufacture.

A. The first step taken with preparing the granite for paving is to drill with drills, and then blasted with powder.

Q. 20. That course brings the stone out in what form?

A. Promiscuously formed.

Q. 21. What is next done?

A. Then it is measured off, and a line drawn for a guide to show the workmen where to cut the stone.

Q. 22. What next follows?

A. Then, if it is not small enough, she is put again in the same way that we can work it with a hammer, which we generally use for working the stone in the pavement.

Q. 23. I don't understand your answer. State what you do as soon as the line is fixed; do you cut, or what do you do?

A. Cut along that line with a hammer, and steel and drill.

Q. 24. Making holes along the line?

A. Making holes along the line.

Q. 25. What is done with the holes?

A. Put wedges in them.

Q. 26. Wedges of what?

A. Wedges of steel.

Q. 27. What is done with the wedges?

A. Drove with a hammer until the stone is broke.

Q. 28. That operation leaves the stone in what form?

A. Depends upon the size of the stone before we commence to do that; sometimes the stone is small enough to break; sometimes it is too large.

Q. 29. What do you do when it is too large?

158 A. Cut it with wedges again until the stone is small enough.

Q. 30. When the stones are small enough what is the next operation called?

A. Breaking.

Q. 31. The next operation is breaking the stone out for the pavements?

A. To split the stone with a hammer.

Q. 32. According to sizes given to you?

A. Yes.

Q. 33. From whom did you get your orders?

A. William Booth.

Q. 34. What orders did he give you?

A. Give me the dimensions of the stones.

Q. 35. Which were what? State them as to dimensions; what were the inches?

A. From ten to fourteen inches long, and from eight to nine broad; four to five thick.

Q. 36. Those were the dimensions you were making for Myrtle avenue?

A. That is the largest size of block we were making for Myrtle avenue.

Q. 37. The other sizes were what?

A. From ten to fourteen inches long; from six to seven broad; four to five thick.

Q. 38. Did you make these blocks according to directions?

A. Yes, as far as we could; they are not all the one size.

Q. 39. In what shape did you cut the blocks; in what uniform squareness?

A. Square-shaped.

Q. 40. Do you mean by that answer that you cut the blocks into an absolute uniform shape?

A. Yes.

Q. 41. Or that you endeavored to do so?

A. Endeavored to do so.

159 Q. 42. With what tool did you break the stone into the shape required?

A. We have got a hammer very large, from twelve to seventeen pounds, which would take off most of the rough; and then we have got a little hammer that we work with, what you call a trimmer; I trim them off with that.

Q. 43. Did you have any orders from any one to make the stones smoother on the end or narrow edges than on the sides?

A. No.

(Objected to.)

Q. 44. State whether or not any more attention was given to, or any more efforts made in, making the end or narrow edges of the stones than there was in making the sides smooth.

A. No, sir; I used the same skill and attention with the sides as with the ends. I used the same skill and attention with making the side joints as with the end joints.

Q. 45. Were they made smoother on the end or narrow edges than on the sides?

A. I never examined them minutely. I should say the end joints are smoothest, as a general rule; if there is any difference it is on the end joints; if there is any difference in the smoothness of the sides, joints, or end joints, the end joints were the smoothest.

Q. 46. Was any effort made to have the sides of the block rough or uneven?

A. No; the effort was to make them smooth and not rough.

Q. 47. What was the occasion of such roughness as appeared on either the sides or end of the stones?

A. The reasons are, the tools that we generally use for making pavement won't take off all the waste, with an ordinary amount of labor, of the sides and joints.

160 Q. 48. Were the ends or narrow edges of the blocks rough or uneven?

A. No, just the same as the sides; it was our intention to get them straight.

Q. 49. In getting blocks of the firm in question, would the surface of the narrow ends be any different from an equal average surface of the large side?

A. Yes.

Q. 50. Do you understand the question? If so, tell me what it means.

A. Stones that we have been getting is from eight to nine inches in the broad, and from ten to fourteen inches long, and from four to five inches thick; so by taking off the waste on the side joints, that is the long way, we have to cut eight inches of waste to get it off. On the end joints we have only four inches of waste to cut instead of taking off eight. That gives a reason why the end joints should be a little smoother than the side 'oints, because we have not got so much of a surface to cut off.

Q. 51. How long have you practiced cutting stones in this manner?

A. Well, I have been cutting stones——

Q. 52. State exactly.

A. About twenty-four years since I have commenced cutting them, but I have been twenty years that I have done nothing but cut.

(Objected to testimony which may refer to anything not mentioned in the answer, of any use at all outside the United States.)

Q. 53. Did you ever, if so, how long ago, prepare stones for Belgian pavements?

A. Yes; what they call Belgian pavement in this country.

Q. 54. In what way were such stones prepared?

161 (Same objection continued.)

A. They were drilled and blasted, and then drilled and cut with wedges until we came to the size we could split them with hammers.

Q. 55. Were the stones used on Myrtle avenue made with any different surfaces as to roughness or smoothness than the Belgian stones?

(Objected to, as leading.)

A. No.

Q. 56. State whether or not in preparing the stones in question for use in Brooklyn you exercised any more care with reference to the roughness or smoothness of sides or ends than had hitherto been your practice?

A. No.

(Objected to.)

Q. 57. Have you ever seen laid any other pavement similar to that in question in Myrtle avenue, Brooklyn?

A. Yes.

Q. 58. Where and when?

A. I have seen them in Scotland.

(Objected to.)

Q. 59. What place?

A. Aberdeen.

Q. 60. How did the blocks constituting the Aberdeen pavement compare in appearance and construction with those used in Myrtle avenue?

(Objected to, as the witness has not sworn he saw that pavement laid.

162 Objection as to seeing it laid withdrawn.)

Witness states as to the Aberdeen pavement: The way I seen them putting it down is the same as I have seen in Myrtle avenue; peck up the street; level it up, then dump some sand on it, and level with a broom, the same as I have seen them doing here in Myrtle avenue.

Q. 61. I repeat the question, how did the blocks of stone laid in Aberdeen, as you have stated, compare as to material, construction, and appearance with the blocks of stone laid in the Myrtle avenue pavement in question?

(Objected to.)

A. Well, the stones are made of granite, and the appearance, when laid, was the same you have in Myrtle avenue.

Q. 62. And the construction—same shape?

A. Same shape and appearance.

(Objected to, as leading.)

Q. 63. How did they compare as to roughness or smoothness?

A. Similar to the stones in Myrtle avenue.

(Objection, as before.)

Q. 64. Are you familiar with the laying of pavements constructed of stone blocks in the form of parallelopipeds, or approximating that form?

A. Since I have been a boy I have been in a quarry.

Q. 65. For how many years?

A. I have been for twenty-five or twenty-six years.

163 Q. 66. In reference to the pavement in Myrtle avenue, state whether or not, in your opinion, the presence of sand, tightly rammed betwixt the blocks, is or is not a necessary and essential condition in creating a firm and substantial pavement as the blocks are there laid?

A. Yes; they are the better with the sand in betwixt them, in my opinion.

(Witness also thinks it is necessary.)

Cross-examined by Mr. HARDING:

Q. 67. What is a parallelopiped?

A. I don't exactly know what a parallelopiped is. I give statements as near as I can, according to my experience; according to what I know.

Redirect by Mr. KNAEBEL:

Q. 68. State according to your experience.

A. So I do.

Q. 69. What do you understand to be a parallelopiped block?

A. A parallelopiped is, I understand to be, the joints running parallel up and down along the street parallel with the curb. I don't know exactly the meaning of the word parallelopiped; I don't profess to know.

Q. 70. Could you draw on that piece of paper a sketch of the form of the block you refer to?

A. Yes.

Q. 71. Think you could?

A. Yes.

(The witness proceeds to illustrate the form of the blocks referred to on a piece of paper, and says, "That is it."

Q. 72. The blocks you refer to have that kind of surface?

A. Yes; as near as I can judge.

WILLIAM GRANT.

(The paper is marked Defendant's Exhibit 4, and put in evidence.)

HENRY UTERHART sworn.

Examined by Mr. KNAEBEL:

Q. 1. You were sworn?

A. Yes.

Q. 2. Where do you reside?

A. In Brooklyn.

Q. 3. How long have you resided there?

A. Seven years.

Q. 4. What is your profession?

A. City surveyor.

Q. 5. Been educated as a civil engineer?

A. Yes, sir.

Q. 6. Where?

A. In England.

Q. 7. Have you had any experience in practical mathematics?

A. Oh, yes, sir.

Q. 8. To what extent?

A. To the extent of my profession.

Q. 9. As civil engineer and surveyor?

A. Yes, sir.

Q. 10. How long have you been city surveyor?

A. Some time; seven years.

Q. 11. During that time have you become acquainted with the streets of Brooklyn and their construction?

A. Oh, yes.

Q. 12. Have you examined the pavement consisting of oblong blocks laid in the city of Brooklyn, what is called granite blocks?

A. Part of it; that is, closely, part of it.

Q. 13. State in what streets and between what points you have so examined that pavement. I am talking about actual measurement; 165 I mean to call for an answer showing to what extent you have personally walked over or along such pavement and examined its superficial appearances.

A. I have walked over in Myrtle avenue, from Broadway to Navy street.

Q. 14. Broadway to Navy street?

A. Yes, sir.

WITNESS. Henry street to its full extent has been laid, and Lafayette avenue, from Skillman street to Fulton street, and on Atlantic avenue, from South Ferry to Bond street.

Q. 15. From the examination you thus made of such pavement, state whether, as a general rule, the width of the longitudinal joints between the blocks correspond with the width of the transverse joints between the blocks.

A. They are the same; to all appearance the same, by walking over it.

Q. 16. Do you mean so far as you can form a judgment from actual vision or actual measurement?

A. Yes, sir; from actual vision.

Q. 17. Did you make any actual measurements of any portions of the pavements so examined by you?

A. I did.

Q. 18. Did those portions so measured compare with the average of the pavement in respect to the width of the joints?

WITNESS. Well, can I ask you a question?

COUNSEL. Go on.

WITNESS. You mean a general average of a certain series of measurements in the different streets?

COUNSEL. No; I mean the average of the pavement as it appears to the naked eye.

A. The same.

166 Q. 19. Were the portions selected by you for the purpose of measurement selected on the one hand as presenting unusually wide joints or on the other hand as presenting unusually narrow joints?

A. The portions selected for measurement were selected indiscriminately.

Q. 20. Have you any specific drawings showing the portions so actually measured by you?

A. I have.

Q. 21. Explain them.

(The drawings are produced. There are eight drawings marked, respectively, in lead pencil, A, B, C, D, E, F, G, H.)

Q. 22. Explain Exhibit A; state what is Exhibit A; explain it fully and at large.

A. Exhibit A is a piece of pavement on the northerly side of Myrtle avenue, 141 feet west of Tompkins avenue.

COUNSEL. State any facts connected with that pavement.

WITNESS (continuing). Showing the actual measurements of joints; that is, transversely or longitudinal, with a remark that no travel had been on it and the sand hadn't been removed from its surface. The average of the transverse joints 546 thousandths and average longitudinal joints are 463 thousandths of an inch.

Q. 23. What is the figure B, and explain it fully and at large?

A. An actual measurement on a portion of the block pavement on the north side of Myrtle avenue, 50 feet east of Gates avenue curb; minimum of travel, sand recently removed, average of transverse joints 4729 ten thousandths of an inch; average of longitudinal joints 4727 ten thousandths of an inch.

167 Q. 24. What is Exhibit C? Explain fully and at large.

A. An actual measurement of part of the pavement on the north side of Lafayette avenue, 25 feet east of Skillman street curb; minimum of travel; sand recently removed; average of transverse joints, 312 thousandths of an inch; average of longitudinal joints, 625 thousandths of an inch.

Q. 25. What do the fractional figures on the first of the drawings exhibit?

A. Parts of an inch; inch and parts of an inch.

Q. 26. I know, but what measurement; what does that mean—what measurement do they indicate?

A. The measurement of joints, as stated.

Q. 27. Is that a drawing from actual view or theoretical drawing?

A. From actual drawing.

Q. 28. What is figure D?

A. The section of pavement through a portion of the measurement on Myrtle avenue, Exhibit No. 8.

Q. 29. What does it show?

A. It shows the position of the stone in reference to the longitudinal joints.

(Mr. Knaebel offers in evidence the drawings marked A, B, C, and D.)

Q. 30. What is the figure H? Explain it fully and at large.

A. It represents the appearance in perspective view of a general average of a pavement now laid on the different streets.

Q. 31. Which you have mentioned?

A. Yes.

(Figure H offered in evidence.)

168 Cross-examined by Mr. HARDING:

Q. 32. Was this section D—was it constructed from the pavement or from this?

A. It is not from actual survey; it was made from the different joints here (in A), which makes a plan.

Q. 33. It was constructed from A as a plan?

A. The same.

Q. 34. This (D) is a constructive drawing, based upon that (A)?

A. Yes, sir.

Q. 35. Have you made any drawings showing a longitudinal section of the street?

A. Not as yet.

Q. 36. You reside here?

A. Yes, sir.

Q. 37. You are in the employ of the corporation?

A. Yes.

Q. 38. You can appear at any time for cross-examination?

A. Yes.

Mr. Harding asks to have the further cross-examination of this witness deferred until he has had an opportunity to examine the pavements referred to in these exhibits.

The counsel for the defendant objects—

First. That Mr. Harding had previously requested or suggested that all the witnesses present should be examined to-day.

Second. That it is not yet quarter past two o'clock, and the defendant has no further testimony to offer to-day; that the witness was previously present at the last appointed meeting, which was postponed on the plaintiff's technical objection that the amendments to the answer had not been served or filed, although those amendments 169 had no reference to the testimony of this witness; that the defendant has no control over the time or movements of this witness, any greater than it is entitled to over those of any other witness, and the defendant hereby tenders the said witness for cross-examination, and declines to produce him again for that purpose.

Counsel for complainant declines to cross-examine the witness now, unless an opportunity be afforded to him to examine the pavement referred to in these exhibits, A, B, C, D and H, before cross-examined, and states that the adjournment was by agreement at the last session, and that the witness was not produced or sworn until to-day, and that the usual hour of adjournment is now so near that it would be impossible to complete the cross-examination of this witness at this session.

Mr. Harding requests an adjournment to enable him to examine the pavement in question; an adjournment of two hours to enable them to examine the pavement and get some lunch.

Counsel for defendant rejoins that the request made will be accorded if the complainant will allow, will consent, without motion, to such extension of the time for examining the defendant's witness as may be necessary for the complete presentation of its testimony.

Mr. Harding states, if the parties are unwilling to allow him an adjournment he declines to cross-examine the witness. Mr. Harding continues: It is now half-past three o'clock, and that is the usual time for adjournment in taking testimony. We have have now been in session four hours and a half. And he requests an adjournment, and 170 that this witness be then produced for cross-examination after the adjournment; and so far as the shortness of time is concerned, complainant is willing to sit day after day to enable the defendant to get in his testimony.

Counsel for defendant has discovered since the case commenced that a very important and a larger part of his testimony required to be taken in the city of Rochester, and elsewhere outside the limits of the city of Brooklyn, and has repeatedly requested the complainant's solicitor to consent to an appointment of an examiner in each of such places.

Plaintiff's counsel says: Never made any such request until yesterday.

Mr. Harding requests, under all the circumstances, that the adjournment of the further taking of testimony be adjourned until to-morrow, so as to prevent any loss of time by reason of his request for the further cross-examination of this witness.

Defendant's counsel states that the day of adjournment had been agreed upon between the opposing counsel and the defendant's solicitor (De Witt) according to the official engagements of the defendant's solicitor; and that upon faith of such agreement the defendant's solicitor had left the room and this session prior to Mr. Harding's request; and the counsel now representing the defendant is unable to say whether it will be convenient for defendant's solicitor to attend to-morrow or permitting of his assistants to attend.

Mr. Harding states he is unwilling to cross-examine the witness unless a brief period be allowed him to look at the pavement; and as this is not consented to, declines to cross-examine the witness at this time.

171 The further taking of testimony was then adjourned, according to the prior agreement with Mr. De Witt, for one week from that day.

United States circuit court, eastern district of New York.

CHARLES GUIDET
against
THE CITY OF BROOKLYN.

On motion of William C. De Witt, esq., counsel for defendant in the above-entitled suit, it is hereby ordered that Joseph D. Husbands, esq., of the city of Rochester, New York, be and he hereby is appointed an examiner to take testimony therein.

Dated July 10, 1874.

CHARLES L. BENEDICT.

I certify the foregoing to be a true copy of the original on file in my office and remaining of record.

Witness my hand and seal of said court this 14th day of July, A. D. 1874.

SAMUEL T. JONES, *Clerk*,
By E. B. HUSTED, *Deputy*.

Testimony taken in behalf of the defendant, under and pursuant to the sixty-seventh rule, as amended, before me, Joseph D. Husbands, United States examiner, pursuant to order hereto annexed.

172 ROCHESTER, N. Y., *March 25th*, 1875.

William Hildreth Field, counsel for complainant.

W. C. Witter, counsel for defendant.

GILBERT BRADY, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says as follows:

(It was stipulated that the witnesses may sign the stenographer's minutes, and that the examiner may sign for them, severally and respectively, the original testimony to be placed on file; and each and every of the witnesses consented thereto, and authorized the examiner so to sign.)

Q. 1. What is your name, age, residence and occupation?

A. Gilbert Brady; age, 41; stone dealer and street contractor; I reside at 22 Adams street, Rochester, N. Y.

Q. 2. Have you ever had anything to do with the paving of the streets of Rochester?

A. I have.

Q. 3. State when first.

A. Eighteen or nineteen years ago was the first, if I can recollect.

Q. 4. What kind of pavement?

A. Medina pavement.

Q. 5. Have you been engaged about the paving of streets ever since?

A. Most of the time.

Q. 6. What is the name of the first street that you were acquainted with the paving of?

A. Brown street, the first street that I had practically the paving of.

Q. 7. Who were you associated with at that time?

173 A. At that time, Whitmore, Carson & Co.

Q. 8. What were your duties in that connection?

A. I was foreman.

Q. 9. State the size and shape of the blocks which were used in the paving of Brown street at the time you mentioned.

A. Running from two to three and a half inches in thickness, eight inches in depth, from six to twelve inches in length.

A. 10 Do you mean that the same stone would be from two to three and a half inches thick, or that the different stone would vary, some being thicker than others?

A. Some being thicker than others.

Q. 11. What was the thickness of those stones at the top as compared with the thickness at the bottom?

A. The same—an equal thickness.

Q. 12. Which way were the stones laid upon the street?

A. They were laid in courses crosswise with the street.

Q. 13. Do you mean that the longest part of the stone extended crosswise with the street, or how?

A. When they were over eight inches in length they ran the long way across the street.

Q. 14. When you commenced a course of blocks across the street with a given thickness, state whether or not the same thickness was preserved through that course.

A. As near as was practical I could.

Q. 15. Were the blocks of stone laid immediately behind one another in different courses, or how as to that?

A. They were laid to break joints properly.

Q. 16. What was the width of the joints between the courses of blocks as compared with the joints formed at the ends of the blocks abutting together?

A. The joints running across the streets were the widest joints.

174 Q. 17. About what width of the joints were the joints running crosswise of the street?

A. From half to three-quarters of an inch.

Q. 18. About what was the width of the joint formed at the ends of the blocks; that is, the joints running parallel with the street?

A. The intention on the end joints of the stone running parallel with the street was to have a tight close joint.

Q. 19. State whether that was the practical result attained.

A. I think it was; it is some time ago, but I think it was; it is my opinion that it was.

Q. 20. Which was the roughest, the sides of those blocks or the ends of the blocks?

A. The sides of the blocks.

Q. 21. What directions, if any, did you, as foreman, give regarding this matter?

A. I should have to state, if you are referring to this particular street, I had the furnishing of the material there, but not the putting in and paving of it; the balance of the company attended to that on that street. I was interested so far as furnishing material for the street, but not directly in charge of paving the stone in the street; I was on the work quite often.

Q. 22. Which was trimmed the most, the sides of the blocks or the ends?

A. The ends.

Q. 23. Did you see this pavement in the course of its construction?

A. I did.

Q. 24. State whether or not the blocks touched each other; and, if so, where.

A. On the sides and ends.

Q. 25. Where did they touch each other—the closest on the sides or on the ends?

A. The ends.

175 Q. 26. What was the object of having transverse joint' wider than the joints which ran parallel with the street?

A. To give a foothold to horses.

Q. 27. What was the object of having the end joints the closest?

A. To avoid ruts being cut into the pavement by wagon wheels, and to preserve the proper arch of the street to prevent settling thereby.

Q. 28. State whether or not this was a practically successful pavement for accomplishing these objects.

A. In my opinion it was.

Q. 29. Will you mention the names of some other streets which you had to do with the paving of; say previous to 1865, in Rochester?

A. State street. I am not able to go much further on that; I don't recollect dates regarding the time of improvement; I should have to take some time to think it up.

Q. 30. Will you mention the names of the streets which you had to do with the original paving of, without any regard to time, with the Medina stone pavement?

A. Brown street, State street, Main street, Buffalo street. Water street. Then I have furnished material for a number of streets which other contractors done.

Q. 31. State how these streets, which you have mentioned, were paved in the particulars which you have stated Brown street was paved according to.

A. In my opinion about the same class of work.

Q. 32. State whether or not the transverse joints were wider than the longitudinal joints.

A. They were.

Q. 33. And whether the sides of the stones were rougher than the ends.

A. They were.

Q. 34. And whether the blocks were parallelopipeds substantially.

176 A. They were; that was the intention to have them so.

Q. 35. About when did you commence to be foreman and give directions for the laying of this kind of pavement?

A. I think in 1864 or '65 was the first year that I was stationary on the street work, giving direction for the paving or laying down.

Q. 36. What directions did you give the pavers under your supervision, if any, in the particulars above testified to?

A. Precisely the same.

Q. 37. Have you read the certified copy of the patent upon which this suit is brought?

A. I have.

Q. 38. As a practical man, following the specifications and claim of that patent, what sort of a pavement would you put down?

(Mr. Field objected, upon the ground that it calls for an opinion irrelevant and incompetent; and there has no foundation been laid to show that this man is an expert in the construction of written instruments, or in the laying of pavements in accordance with written or printed instructions.

Received, subject to objection.)

A. Just such work as I have stated there.

Q. 39. Have you read a certified copy of the original letters patent dated January 12, 1869, to Charles Guidet?

A. I have.

Q. 40. As a practical man, following the specification and claim of that patent, what sort of a pavement would you lay?

177 (Mr. Field objected, upon the ground that it calls for an opinion, is irrelevant, is incompetent. He is not an expert in the construction of written instruments, and there is no evidence to show he is an expert in the laying of pavement in accordance with written or printed instructions.

Received, subject to objection.)

A. The same kind of work, with the addition of the chamfer.

Q. 41. What has been the practical success of the pavement which you have been describing, so far as to its affording foothold to the horses by reason of the wide or transverse joints, and so far as its preventing ruts from the vehicles by reason of its closed end-joints?

A. My opinion is that it has been successful.

Q. 42. Look at the model which is here introduced in evidence and marked "Defendant's Exhibit Rochester No. 1," and state how it compares with the pavement which you have been laying and been familiar with for the last eighteen or nineteen years in Rochester.

A. I think it is a fair sample—the same kind.

Q. 43. State whether these pavements which you have testified regarding were laid exactly flat, crosswise with the street or not.

A. They were not; they were laid crossing.

Cross-examined by Mr. Field:

Q. 44. Will you state particularly what part of Brown street was laid with this pavement?

A. From State to the canal bridge, or foot of the hill. I don't know whether it ran up on the hill or not. I have forgotten. It was near the bridge.

Q. 45. What part of State street?

A. From the four corners to the railroad crossing.

Q. 46. What part of Main street?

A. The bridge portion.

Q. 47. The bridge portion of Main street?

A. Yes, sir.

178 Q. 48. What part of Buffalo street?

A. From the west end of Main street bridge to Fitzhugh.

Q. 49. What part of Water street?

A. From Andrew to the railroad crossing.

Q. 50. What is a parallelopiped?

A. As I understand it, it is a block of stone or wood with the opposite ends being parallel with those in front, opposite corners, plumb-joints, or plumb ends.

(Signed) GILBERT BRADY.

JAMES BLAKELY, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My occupation is paving and laying flagging; that is what I work at. My name is James Blakely. I am about 51 years old. I live in Rochester, N. Y.

Q. 2. How long have you been a paver?

A. I couldn't exactly say. I suppose about 16 years.

Q. 3. What street did you work on first?

A. Front street.

Q. 4. What did you pave it with?

A. Medina stone.

Q. 5. About when was this?

A. I should think about sixteen years ago last summer.

Q. 6. Was it when Front street was first paved with Medina stone?

A. Yes, sir.

Q. 7. Who did you work for in paving Front street?

A. William Carson.

Q. 8. What kind of blocks did you use in paving Front street at this time?

179 A. They were blocks about six inches deep, or from that to eight; from six inches to a foot long, by two inches and a half to three inches wide, or three and a half wide.

Q. 9. How did the width of the stone at the top compare with the width at the bottom?

A. Well, they were about the same. We had to make them about the same, as near as we could possibly.

Q. 10. Which way did you lay them across the street, longwise or sidewise?

A. We laid them longwise, you know.

Q. 11. Which were the rougher of these blocks, the sides or the ends, if either?

A. The sides.

Q. 12. Which did you trim the most, the sides or the ends?

A. The ends.

Q. 13. Which joint was the widest, the joint that ran crossways with the street or the end joint, if either?

(Mr. Field objected, on the ground that it implies something the witness has not testified to, and that he has not testified that there are any joints.

Received, subject to objection.)

A. The cross-joint across the street.

Q. 14. What was the object of having this joint widest?

A. To make a foothold for horses, to keep them from slipping on the pavement.

Q. 15. Why were the end joints made closer?

A. Because it kept from ruts cutting in the street by having the joints kept close.

Q. 16. When you commenced to lay a course with a certain width of blocks, state whether or not you continued the same width across the street in that course.

A. Yes, sir; we continued the same width.

180 Q. 17. State whether or not the stones touched each other on the sides somewhere.

A. There was little rough places on the stones, and it would touch at those.

Q. 18. What street did you pave next, after Front street?

A. State street.

Q. 19. And about when was that?

A. That was the next year; we done that after we done Front street; the next summer we paved that.

Q. 20. What street did you pave next after that?

A. I paved out that street down to the four corners the next summer.

Q. 21. What other streets have you assisted in paving, also, with Medina stone?

A. Mill street, and on Main street here, and on Water street and Madison avenue.

Q. 22. State whether you laid the pavements in other streets you mention in the same manner and with the same sort of stone as you did that of Front street.

A. We laid them all just about the same; all streets just about the same way.

Q. 23. Look at the model marked "Defendant's Exhibit Rochester No. 1," and state how that compares with the pavement which you laid in Front street and in those other streets.

A. Yes, sir; that is like what I laid in them streets.

Q. 24. State whether or not you received directions from your foreman to lay them in the manner you have described.

A. Yes, sir; we got directions from the foreman to lay them so.

Q. 25. Who were your foremen? Name some of them.

A. Mr. Gilbert Brady was one; Carson has been.

Q. 26. Do you mean Carson, of the firm of Whitmore, Carson & Co.?

A. Yes, sir.

181 Redirect examination:

Q. 27. Is Mr. Brady a partner in that firm now?

A. Well, I guess so.

Cross-examined by Mr. FIELD:

Q. 28. What part of Front street was laid?

A. It was the north part of it.

Q. 29. The lower part?

A. Yes, sir.

Q. 30. Between what streets?

A. Between the railroad depot and Mumford street.

Q. 31. What part of Mill street was laid?

A. It was laid from the Arcade to Mumford street.

(Signed) JAMES his × mark BLAKELY.

GILBERT BRADY recalled and examined by Mr. WITTER for the defendant:

Q. 1. Are you a member of the firm of Whitmore, Carson & Co., and how long have you been so?

A. About four years of the firm of Whitmore, Carson & Co.

Q. 2. Look at the model marked "Rochester, Defendant's Exhibit No. 1," and state which joints are the wider, the joints on the sides or the joints on the ends of the blocks.

A. The joints at the sides of the blocks are the widest.

GILBERT BRADY,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed March 25, 1875, before me.

J. D. HUSBANDS,
Examiner.

182 JOHN MCCONNELL, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by MR. W. C. WITTER, counsel for defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Age, 46; occupation, street and sewer contractor; residence, 118 East avenue; my name is John McConnell.

Q. 2. Have you ever had anything to do with the paving of streets with what is known as the Medina stone?

A. Yes, sir.

Q. 3. State when first you personally had anything to do with that sort of work.

A. I couldn't state the exact time.

Q. 4. State as nearly as you can remember, approximate to it.

A. I couldn't do that. It has been my business all my life—the paving and sewer business; I couldn't state the exact time when I did commence.

Q. 5. Would you consider yourself safe in saying that you had been engaged in paving with this sort of stone for more than twenty years?

A. Yes, sir.

Q. 6. Do you know of a pavement of this kind of stone being laid longer than that ago; and, if so, state when you knew it in the city of Rochester?

A. The first I saw of this kind of stone was in 1853 on Frank street.

Q. 7. Did you know of your father doing any of this kind of work; and, if yea, state when you knew it?

A. I have.

183 Q. 8. How did you become acquainted with the sort of pavement that it was?

A. By taking the same up.

Q 9. About when?

A. Four years ago.

Q. 10. When was that pavement laid by your father; how long ago?

A. In 1834.

Q. 11. Will you describe the kind of blocks that were found in that pavement laid by your father in 1834?

A. They were blocks dressed off to very near an even thickness, about a foot long, from a foot to thirteen or fourteen and ten inches, different size, paved transversely across the street, from three to four inches thick.

Q. 12. How deep up and down?

A. From eight to ten inches.

Q. 13. State which was the roughest, the sides of those stones next the transverse joints or the ends of them.

A. The sides were the roughest.

Q. 14. Where did they lay the closest to each other, the side joints or the end joints?

A. The end joints.

Q. 15. Which was the widest, the transverse joint or the end joints?

A. The transverse joints.

Q. 16. How did the thickness of those stones at the top and bottom, and also at the two ends, compare?

A. They were of an equal thickness.

Q. 17. You have now described the stones as you found them, and as you found them laid in the pavement which you took up, which was laid by your father; state now whether you have known of or had to do with the laying of pavement yourself in all respects like this pavement which you took up in those particulars.

A. I have.

Q. 18. For how long?

A. For the last fifteen or twenty years.

184 Q. 19. State where.

A. Most all these streets that have been mentioned over by the preceding witnesses.

Q. 20. State whether you have ever been foreman over gangs of men in laying this kind of pavement.

A. I have.

Q. 21. State what directions, if any, you gave them with reference to their work.

A. We gave them directions to make their joints close at the ends and make a good job.

Q. 22. When you were foreman, state which you had trimmed the most, the sides or the ends of the blocks, if either.

A. The ends.

Q. 23. Why did you have the ends trimmed the most?

A. To make the blocks come together close and form an arch on the street.

Q. 24. Why did you want the joints to come together close at the ends?

A. To prevent the street from rutting; it formed an arch and helped to make a crown to the street.

Q. 25. Why did you want a wide joint at the sides?

A. To receive sand and to retain the calks of horses in traveling over the sand—the calks of horses' shoes.

Q. 26. You have mentioned a varying thickness for the paving stones; state whether you used in a given course stones of a uniform thickness, or how as to that.

A. As near as might be.

Q. 27. State whether or not in this Frank street pavement, and in the other pavement which you have since laid of the kind described, the sides of the stones touched each other somewhere.

A. It was rulable to have them touch, to come close together.

Q. 28. Do you mean by rulable that that was the rule?

A. That was the general rule; yes, sir.

185 Q. 29. How many miles of streets should you think the city of Rochester has of the kind of pavement you described at present?

A. About ten miles, I should think.

Q. 30. Look at the model "Defendant's Exhibit Rochester No. 1" and state how that compares with the pavement you took up in Frank street and with the pavement which you have been superintending the laying of as foreman or contractor in the different streets you have mentioned.

A. It is similar to that.

Q. 31. What do you mean by similar?

A. As nearly like as may be.

Q. 32. Look at the said exhibit and state which are the most open, the side joints or the end joints.

A. The side joints.

Q. 33. Have you read a certified copy of the letters patent upon which this suit is brought?

A. I have.

Q. 34. As a practical man, as foreman and contractor for pavements, following the specification and claim of that patent, what sort of a pavement would you lay?

(Mr. Field objected, upon the ground that it calls for an opinion, as irrelevant and incompetent; that he is not an expert in the construction of written instruments, and there is no evidence to show that he is an expert in laying a pavement in accordance with written or printed instructions.

Received, subject to objection.)

A. The same as exhibited here.

Q. 35. Have you read the original patent to Charles Guidet, dated Jan. 12, 1869?

A. I have.

186 Q. 36. Following the description and claim of that patent, what sort of a pavement would you lay?

(Mr. Field objected, upon the ground that it calls for an opinion of the witness, and is irrelevant and incompetent; he is not an expert in the construction of written instruments; there is no foundation in the evidence to show he is an expert in laying pavement according to written or printed directions.

Received, subject to objection.)

A. I would lay a pavement the same as that, with the exceptions that the edges of the stone would be chamfered off.

Q. 37. The same as the model?

A. The same as the model.

Q. 38. State how the pavement which you have described as having taken up in Frank street and the pavements which you have laid or assisted in laying in the other streets compares with the description and specification of the patent upon which this suit is brought—I am asking about the patent upon which this suit is brought.

A. As near as might be.

Q. 29. Are you acquainted with Isaac Holloway, of Buffalo?

A. I am.

Q. 40. Did you know his brother, John Holloway?

A. I did.

Q. 41. Are you acquainted with their having laid pavement of the character which you have described?

A. Yes, sir.

Q. 42. State in what city or cities.

A. In Buffalo and Rochester.

Cross-examined by Mr. FIELD:

Q. 43. What portion of Frank street was the pavement laid in?

187 A. From Platt to Center street.

Q. 44. Where was this pavement laid that you took up?

A. I took up pavement all through the city.

Q. 45. Which was the pavement laid, which you took up, that you stated that your father had laid previously?

A. On Exchange street.

Q. 46. Between what streets?

A. Between the canal and Spring street.

Q. 47. Did you take up all your father laid?

A. I took up all that portion of it between the canal and Spring street.

Q. 48. What remains?

A. Nothing remains that he laid.

Q. 49. Did he lay it on any other streets?

A. Not to my recollection.

Q. 50. Where is the pavement laid in Buffalo that you refer to?

A. It is laid on Main street.

Q. 51. Between what streets?

A. I could not tell you, sir.

Q. 52. Near what streets?

A. Well, the Terrace is one place that is laid with that.

By Mr. WITTER:

Q. 53. State whether, in the particulars of furnishing a good foothold for the horses, joints, and the prevention of the ruts by vehicles by the close end joints, the pavements which you have said you laid or assisted in laying were or were not practically successful.

A. The most successful pavements that are laid, or we ever laid.

Q. 54. When, in your testimony, you have spoken of paving any particular street or streets, you have referred have you not, to the time when they were originally paved with Medina stone, and in the manner described?

188 A. I have.

By Mr. FIELD:

Q. 55. Do they still remain paved?

A. Yes, sir.

Q. 56. With Medina stone?

A. Yes, sir.

Q. 57. And in the same manner in which they were originally paved?

A. Yes, sir.

By Mr. WITTER:

Q. 58. You don't mean to say that those pavements have not been worn by travel in the meantime?

A. No, sir.

JOHN McCONNELL,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed March 25th, 1875, before me,
J. D. HUSBANDS,
Examiner.

MICHAEL CALLAGHAN, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Michael Callaghan is my name; my age is forty-three years; I live in Rochester; my occupation is street-paver and stone-dresser.

Q. 2. How long have you been a paver and dresser of paving-stones?

A. Sixteen years.

189 Q. 3. In what city?

A. Most of the time in Rochester.

Q. 4. When did you first follow your occupation in Rochester?

A. As near as I can remember, in 1858.

Q. 5. Do you remember the first street that you paved?

A. Yes, sir.

Q. 6. What was it?

A. North Front street.

Q. 7. Whom did you work for?

A. Whitmore & Co.

Q. 8. State what sort of stones you used in the pavement of that street; I refer to their size.

A. The size was supposed to eight inches long and eight inches deep, and from two to three or three and a half inches thick.

Q. 9. Were they sometimes longer and sometimes shorter than eight inches?

A. Yes, sir.

Q. 10. State whether or not the stones were of the same thickness.

A. They average the same.

Q. 11. How did the length of the stone on top compare with the length on the bottom?

A. They were supposed to be the same.

Q. 12. And how did the thickness on the top compare with the thickness on the bottom?

A. That was supposed to be the same.

Q. 13. Which was the roughest, the sides of those stones or the ends?

A. The sides, generally.

Q. 14. Where was the closest joint formed; at the sides of the block or on the ends?

A. On the ends.

Q. 15. Which way did the joints on the sides of the blocks run?

190 A. The joint ran across the street.

Q. 16. What was the object of having the side joint wider than the end joint?

A. It was necessary to have the side joint wider than the end to form a foothold for the horses.

Q. 17. Why was the end joint made closer than the side joint?

A. It was necessary to have the end joints closer than the sides, to form strength for the street, and to prevent ruts afterwards.

Q. 18. In dressing and trimming the stones for this pavement, which was dressed and trimmed the most, the sides or the ends of the stones?

A. The ends.

Q. 19. Why?

A. As I stated before, the stone required more care on the ends in trimming.

Q. 20. What other streets have you paved in the manner which you have just described, previous to the year 1865?

A. Centre street, the north portion of State street, and the south end of State street.

Q. 21. Have you paved streets since that time in the same manner?

A. Yes, sir.

Q. 22. When last?

A. Last summer; in 1874.

Q. 23. State whether James Blakely also paved with you last summer in this manner.

A. Yes, sir.

Q. 24. What directions, if any, did you receive from your foreman, regarding the width of the joints or the trimming of the blocks?

A. They directed us to break our joints, and to make close end joints.

191 Q. 25. Did the stones, as a general thing, touch each other on the sides, as well as on the ends?

A. They always do at the bottom or centre, touch each other.

Q. 26. Look at the model "Defendant's Exhibit No. 1," and state how that compares with the pavement that you laid in 1858, in North Front street.

A. That compares favorably.

Q. 27. Are the side joints wider in that model than the end joints?

A. Yes, sir.

Q. 28. Who have you worked for during the years mentioned?

A. Whitmore & Co., Whitmore, Carson & Co., Dave Wagner, Mr. Brady, and Whitmore, Brady & Co., and there is a V. F. Whitmore & Co., and Mr. Benjamin Butler. That, I believe, is all the contractors that I have had anything to do with that work; all that I worked for, and all I can remember.

Cross-examined by Mr. FIELD:

Q. 29. Between what streets was this pavement laid on North Front street?

A. Between the N. Y. Central Railroad and Mumford street.

Q. 30. Between what streets on Centre street?

A. Between Frank and Mill streets.

Q. 31. Between what streets on North State street?

A. Between the N. Y. Central Railroad and Platt street.

Q. 32. South State street?

A. From the N. Y. Central Railroad to Buffalo street.

Q. 33. Between what streets did you lay the pavement last summer?

192 A. Between the N. Y. Central Railroad and Andrews street.

Q. 34. On what street?

A. North Water street.

MICHAEL CALLAGHAN,
By J. D. HUSBANDS, *Examiner.*

Sworn, taken, and subscribed, March 25th, 1875, before me,
J. D. HUSBANDS,
Examiner.

MATHIAS THIES, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Mathias Thies; age, forty-six years; my residence is Rochester, N. Y., my occupation is a paver.

Q. 2. What sort of pavement have you laid chiefly—that is, of what stone?

A. Of Medina sandstone.

Q. 3. For how many years have you been laying pavement of this kind of stone?

A. I have been laying these kind of stones since 1854.

Q. 4. What street did you work on first in this work?

A. That was in Lockport, lower town.

Q. 5. What street did you work on first in Rochester in laying Medina stone, and when was it?

A. That was in Brown street, in the year 1855.

Q. 6. What was the size of those blocks?

193 A. There was blocks from two to three inches, to three and a half inches thick, from six or eight, ten or twelve or fourteen inches long, and eight inches deep.

Q. 7. State whether they were the same size at the top and bottom.

A. They were the same always.

Q. 8. Which was the roughest, the sides of the stones, or the ends?

A. After they were trimmed, or before they were trimmed?

Q. 9. After they were trimmed?

A. The sides were the roughest.

Q. 10. How were they laid, as compared with the street; the long way of the stone across the street or parallel with the street?

A. The stone eight inches by ten, I would put it down eight inches deep, and put it longways across the street.

Q. 11. Did they break joints, or not?

A. Yes, sir; they broke joints.

Q. 12. When you started at the curbing, or where you commenced to lay a course with a stone, say two inches and a half thick, did you continue that course with the same thickness of stones, or not?

A. Yes, sir; I continued that same course through.

Q. 13. With the same thickness?

A. Yes, sir; the same thickness.

Q. 14. Which was dressed the most, and which was trimmed the most, the sides, or the ends of the stones?

A. The ends of the stone.

Q. 15. Which was the wider joint, the joint at the side of the stone running across the street, or the joints at the ends of the stone?

A. The points at the sides of the stone.

Q. 16. Why was that point made wider?

A. It gave a foothold for the horses to travel over.

Q. 17. Why was the end joint made close?

194 A. To keep it from wearing down holes in the street with wagon wheels, or such things.

Q. 18. Look at the model "Defendant's Exhibit, Rochester, No. 1," and state whether or not that is substantially the same pavement you have described as being put down in Brown street.

A. Yes, sir; that is the pavement I put down always.

Q. 19. You say you paved Brown street in 1855 in this manner described; what other streets, if any, have you helped pave in Rochester in the manner above described, previous to 1865?

A. That was State street, below the N. Y. Central Railroad, Buffalo street, Atwater street, Mill street; that is all I can recollect before that time.

Q. 20. Name the streets which you have done work on between 1865 and 1869, which was the same as the work you have described above.

A. Well, I can't remember; I believe there was Market street, and Mumford street, and—I will stop there; I don't remember any others.

Q. 16. Look at the model "Defendant's Exhibit, Rochester, No. 1," and state whether the side joints are wider than the end joints.

A. The side joints are the widest.

MATHIAS THIES,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed, March 25, 1875, before me,
J. D. HUSBANDS,
Examiner.

WILLIAM BURGESS, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but
195 the truth in the matter of controversy herein, and being examined by W. C. Witter, counsel for the defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. William Burgess; thirty-nine years old; I live in Rochester; my occupation is a paver.

Q. 2. What kind of stone have you been a paver of mostly?

A. What we call Medina block.

Q. 3. How long have you been a paver of Medina block in Rochester?

A. The first in Medina work that I recollect of, was on Brown street.

Q. 4. Do you mean when Brown street was originally paved with the Medina pavement?

A. Yes, sir.

Q. 5. Whom did you work for at that time on Brown street?

A. I worked for my father.

Q. 6. Will you give me the size of the blocks which you laid at this time on Brown street; that is, the length, and the depth, and the thickness?

A. I didn't lay any on Brown street.

Q. 7. What did you do about it?

A. I was working on the street pounding—what we call pounding.

Q. 8. What was the size of the blocks laid on that street at that time?

A. Well, eight or ten or twelve inches long, six or eight inches deep.

Q. 9. What was the thickness?

A. Some two inches to three inches and a half.

Q. 10. Were those blocks of uniform length, and of uniform thickness up and down; I mean the particular blocks?

196 A. About as near as we could get them.

Q. 11. State whether or not they were laid so as to break joints.

A. Yes, sir.

Q. 12. And were they laid lengthwise across the street?

A. Yes, sir.

Q. 13. Which were the roughest, the sides of theblocks or the ends of them?

A. The sides were the roughest.

Q. 14. With which was the most pains taken, in trimming and dressing, the sides or the ends?

A. The ends.

Q. 15. Which was the widest, the joint formed at the sides, or the joint formed at the ends?

A. The joint formed at the sides.

Q. 16. Did the stones touch each other somewhere at the sides?

A. Yes, sir.

Q. 17. Was anything put between the stones at the sides; if so, what?

A. Why, we put sand between them.

Q. 18. Why was the joint at the sides made the widest?

A. Well, that was for horses to catch a foothold.

Q. 19. Why was the joint at the ends made close?

A. We made the joints at the ends close in case of the ruts; so that the wagons wouldn't rut it.

Q. 20. Did you receive instructions from your foreman or your father to lay them in this way; were instructions given by the foreman that they should be laid in this way?

A. I got such instructions.

Q. 21. When did you act as pounder on Brown street, as near as you can remember?

A. It was in 1855; I think it was.

197 Q. 22. Look at the model, "Defendant's Exhibit, Rochester, No. 1," and state how the pavement therein compares with the pavement you worked on in Brown street in 1855.

A. It is the same.

Q. 23. Upon what other streets, between 1855 and 1860, did you work on in laying pavement in the manner you have described?

A. Well, I cannot fetch it to recollection what streets I did work on, I have worked on so many of them.

Q. 24. Name the streets that you have worked on between 1855 and 1869, and laid pavement in the manner above described?

A. I worked on Front street, I worked on State street, I worked on Mill street; I cannot think of any other.

Q. 25. When speaking of working on the pavement of these different streets do you mean at the time they were originally paved with Medina stone?

A. Yes, sir.

Q. 26. Look at the model, "Defendant's Exhibit, Rochester, No. 1," and state whether that represents the pavement which has been laid by you upon these different streets.

A. I have examined that and it is the same.

Q. 27. Which joint in the model is the wider; the joint upon the side of the stones or the joint at the ends?

A. The joint on the side of the stones.

Q. 28. Which is the rougher; the side of the stones or the ends?

A. The sides of the stones.

Cross-examined by Mr. **Field**:

Q. 29. Brown street, between what streets?

A. Between Mill street and State street.

Q. 30. Front street, between what streets?

198 A. Mumford street and the New York Central depot.

Q. 31. State street, between what streets?

A. The Four Corners and the New York Central depot.

Q. 32. Mill street, between what streets?

A. Mumford street and the New York Central Railroad.

Q. 33. Do these pavements still exist as they were laid?

A. Yes, sir.

By Mr. **Witter**:

Q. 34. You say that these pavements still exist as they were laid; do you mean that they haven't been worn away by horses, in travel?

A. No, sir; they have been worn.

WILLIAM BURGESS,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed this 25th day of March, 1875,
J. D. HUSBANDS,
Examiner.

BENJAMIN BUTLER, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by W. C. WITTER, counsel for the defendant, deposes and says, as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Name, Benjamin Butler; sixty-four years old; I live at 24 Grieg street, Rochester; my occupation is street superintendent at present.

199 Q. 2. Do you mean that you are superintendent of the streets for the city of Rochester?

A. Yes, sir; I am superintendent of the streets in Rochester.

Q. 3. How long have you been superintendent of the streets in Rochester?

A. Well, altogether do you mean?

Q. 4. Yes.

A. I was street superintendent under the common council in 1864, 1865, 1866, and 1867; I was superintendent under the commission of 1873, 1874, and so far into 1875.

Q. 5. Have you held any other office under the city government, and, if so, what?

A. I have had the honor of being an alderman here for six years.

Q. 6. When were these six years?

A. Commencing at 1856.

Q. 7. Have you been familiar with the kind of pavement laid in the streets of Rochester, from the year 1856 to the present time?

A. Yes, sir.

Q. 8. From that time to the present, what has been the size about of the blocks, which have been laid, forming the Medina stone pavement?

A. The length of the stones vary from six to twelve inches.

Q. 9. The depth?

A. The depth of the stone does not vary so much; they vary a little; eight inches is the usual depth, and sometimes vary a little; some may be six and some may be nine.

Q. 10. What has been the thickness of the blocks from top to bottom, and from end to end?

A. From two to about three and a half inches.

200 Q. 11. Were the separate blocks of a uniform thickness from top to bottom, and end to end?

A. Yes, sir.

Q. 12. Which were the rougher; the sides of the blocks or the ends?

A. The sides.

Q. 13. State whether the sides were left purposely rougher; and, if so, for what object?

A. The sides were left rougher, and left apart for a half or three-quarters of an inch, for the purpose of receiving sand to keep them apart for the benefit of the horses.

Q. 14. Why were the end joints made close?

A. So that there should be no ruts in the street.

Q. 15. Mention the streets to which you have referred—so many of them as you remember.

A. Brown street is the first; Centre street; those two streets I paved and had the contract myself; those other streets many of them I have simply worked on; many other streets; State street, Front street.

Q. 16. Can you mention other streets?

A. Yes, sir; Main street, West Main. I don't think of any others just now.

Q. 17. Was the pavement upon the streets practically successful in accomplishing the two purposes of forming a foothold for the horses by reason of the wide transverse joints, and of the prevention of the ruts by reason of the close end joints?

A. Yes, sir.

Q. 18. Has it been your duty to see that the pavement possessed these qualities?

A. Yes, sir.

Q. 19. Look at the model, "Defendant's Exhibit, Rochester No. 1," and state whether that substantially represents the pavement which you have described and known of being laid in the various streets.

201 A. That is precisely the same thing.

Q. 20. If parts of these pavements have been at different times repaved where it has been taken up by the gas companies or otherwise, has the repaving been substantially of the same character as the original pavement?

A. Very likely not.

Q. 21. That you are not very sure about?

A. It is very difficult to take up a piece of Medina pavement right in the middle of the street and put it back exactly as it was before.

Q. 22. Have you read the certified copy of the patent upon which this suit was brought?

A. Yes, sir.

Q. 23. As a practical man, contractor, and superintendent of city streets, what sort of a pavement would you lay following the specification and claim of that patent?

(Mr. Field objected, as calling for an opinion, as irrelevant, incompetent. The witness is not an expert in the construction of written instruments, *nda* there is no foundation laid to show that he is an expert in the construction of pavements in accordance with written or printed instructions.

Received, subject to objections.)

A. I would lay just such a pavement as is laid of the Medina stone in Rochester, in all the streets in Rochester.

Q. 24. When you say all the streets in Rochester you mean those you have mentioned?

A. I mean all that are laid of Medina stone; they are all laid on one plan and one principle.

Q. 25. Have you read a certified copy of the original patent of Charles Guidet, dated January 12, 1869?

202 A. Yes, sir.

Q. 26. As a practical man, contractor, and superintendent of city streets, what sort of a pavement would you lay following the specification and claim of that original patent?

(Mr. Field objected on the ground that it calls for an opinion; it is irrelevant and incompetent. The witness is not an expert in the construction of written instruments, and no foundation has been laid to show that he is an expert in following the directions written or printed in regard to laying pavements.

Received, subject to objection.)

A. The original patent, as I read it, calls for the stone to be rounded off on the edge; otherwise it is the same precisely; it says it may be rounded off.

Q. 27. Is it the original patent or the patent sued on that says it may be rounded off? Please look and see if you are not sure.

A. This patent (the original patent) says that the edges are to be rounded. It says they are to be chamfered.

Q. 28. Look at the model, "Defendant's Exhibit, Rochester No. 1," and state whether or not the joints at the sides of the stones are wider than the joints at the ends.

A. I have examined the model, and the joints at the ends are closer than the joints at the sides.

Q. 29. I observe in the third row of stones from the front in that model a couple of stones at the right hand, which at the top appear to have a pretty wide joint; do you very often find the stones laid practically with a join', as wide at the ends?

A. No, sir; they are not.

Q. 30. Mention the names of some of the contractors who have laid the kind of pavement you have described in Rochester.

203 A. William Carson & Co., Brady & Co., David Wagner, Halloway, Normington, McConnell & Jones.

Q. 31. By Halloway, do you mean Isaac Halloway, of Buffal*lo*?

A. Yes, sir; Mr. Horan, of Medina.

Q. 32. By Mr. McConnell, do you mean McConnell who has been examined here?

A. I mean John McConnell and William Jones.

Q. 33. By Mr. Brady, do you mean the Mr. Brady who has been examined this morning?

A. Yes, sir.

Q. 34. Do you consider Mr. Brady, Mr. McConnell, Isaac Halloway, Mr. Grantsynn, as men capable of laying pavement from printed or written specification, and in accordance therewith?

(Mr. Field objected as calling for an opinion, as irrelevant and incompetent, and not the proper mode of introducing such evidence.)

A. I do, sir.

Cross-examined by Mr. Field:

Q. 35. Were these stones laid in courses?

A. Yes, sir.

Q. 36. Why is it difficult, then, if any repaving is done for gas piping, plumbing, or otherwise, to repave in the same manner in which the pavement was formerly laid?

A. The same class of men wouldn't, perhaps, do the paving that done it at first; and perhaps those men are working by the yard or by the foot, and they do it as cheap as possible.

Q. 37. Suppose that they are not working by the yard or by the foot, could they do it in the same manner?

A. If special pains were taken it could be done the same as before.

204 Q. 38. State whether or not these pavements which you have laid many years have not been worn considerably on the tops by travel.

A. Yes, sir; some street are worn—very much worn off; two or three inches.

Q. 39. State what effect continued travel has had, if any, upon the edges of the pavement in some sections of the city.

A. The top edges of the stone—the top of the pavement—the edges of the stone always chip off, and the stone becomes round on the top.

BENJAMIN BUTLER,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed March 25, 1875, before me.

J. D. HUSBANDS,
Examiner.

WILLIAM S. GRANTSYNN, a witness of lawful age, produced on the part of the defendant, by me first duly cautioned, examined, sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of the controversy herein, and being examined by W. C. WITTER, counsel for the defendant, deposes and says, as follows:

Q. 1. What is your name, age, residence, and occupation?

A. W. S. Grantsynn; my age is forty-three; I am a surveyor and engineer by occupation; and my residence is Rochester, New York.

Q. 2. Are you the city surveyor?

A. I am.

Q. 3. How many years have you filled that position in all?

205 A. I have worked as assistant in the office for six or seven years, and have been city surveyor for five years.

Q. 4. From what date are you familiar with the class and kind of pavement that has been laid in the city of Rochester with Medina stones?

A. Since 1857, the time I commenced work in the office.

Q. 5. When were the following streets paved with Medina stone: Jay street?

A. It was paved about 1864 or 1865, Jay street was; that was during a time that I was not in the office at work; so I will not be positive about that street.

Q. 6. Oak street?

A. That was paved about the same time that Jay street was.

Q. 7. Frank street?

A. There was a portion of Frank street paved prior to 1857, and a portion of it was paved, I think, in two subsequent contracts, somewhere from 1865 to 1868 or 1869.

Q. 8. Brown street?

A. That was paved prior to 1857.

Q. 9. Front street?

A. The first pavement of that was in 1860.

Q. 10. State street?

A. That was paved under different contracts; a portion of it was paved in 1857, a portion of it in 1859, and I think a portion of it in 1861.

Q. 11. Center street?

A. Was paved in 1875.

Q. 12. Mill street?

A. I am not so positive about that. I think it was about 1864.

Q. 13. Main street?

A. I am not so positive about that. I think it was about 1864.

206 Q. 14. Have you heard the testimony of the witnesses who have been examined to-day?

A. A portion of them.

Q. 15. Mention which ones.

A. I heard a portion of Mr. Brady's testimony and a portion of Mr. Butler's testimony.

Q. 16. Did you hear the description which they gave of the blocks, and the manner in which they were laid?

A. I did.

Q. 17. State whether the streets you have mentioned were paved in accordance with the description which they gave of the pavement and the blocks originally paved with the Medina stone.

A. They were.

Q. 18. State which were the wider, the transverse joints or the longitudinal joints.

A. The transverse joints.

Q. 19. State which were the rougher, the sides of the stones, or the ends thereof.

A. The sides of the stones.

Q. 20. Why have the transverse joints been made more open than the end joints?

A. For the purpose of admitting the sand, and to leave an opening so that the horses could get hold and get a better footing.

Q. 21. Why have the end joints been made close?

A. For the purpose of sustaining the pavement in a firm position, and to prevent the making of ruts lengthwise of the street, where they travel on them.

Q. 22. Has the manner of laying the pavement, as described by Mr. Butler, and Brady and others, been practically successful in accomplishing these two purposes in the streets you have mentioned?

A. They have.

Q. 23. Do you, as city surveyor, consider Mr. Brady, Mr.
207 McConnell, Mr. Butler, and Mr. Maltby as capable of laying and superintending the laying of streets from printed or written specifications?

(Mr. Field objected, as calling for an opinion, incompetent, irrelevant.

Received, subject to objection.)

A. I do.

Q. 24. Have you examined a certified copy of the patent upon which this suit was brought?

A. Yes.

Q. 25. Following the specification and claim of that patent, what sort of a pavement would you lay?

(Mr. Field objected, as incompetent and irrelevant.

Received, subject to objection.)

A. I should lay the same kind of a pavement as we lay here in the city, under the name of the Medina pavement.

Q. 26. And such as has been laid in the streets mentioned?

A. Yes, sir.

Q. 27. Look at the model Defendant's Exhibit Rochester No. 1, and state how that compares with the pavement that has been laid in the various streets you have mentioned.

A. I have seen the model and examined it. It is the same manner in which we laid the Medina stone pavement in this city in those streets.

Q. 28. State whether or not the pavement laid in the streets you have mentioned has been practically successful in accomplishing the two purposes you have mentioned, namely, of affording a foothold for the horses, by reason of the wider transverse joints, and of preventing ruts by travel by reason of the close end joints.

A. They have.

208 Q. 29. State what is the comparative size of the top and bottom of the stones which have been used in the paving of these streets.

A. Well, they are the same.

Q. 30. When you have spoken of the paving of the streets named you have referred, have you not, to the time they were originally paved with Medina stone?

A. Yes.

WILLIAM S. GRANTSYNN,
By J. D. HUSBANDS,
Examiner.

Sworn, taken and subscribed, this 25th day of March, 1875, before me.

J. D. HUSBANDS,
Examiner.

GEORGE W. MALTBY, a witness of lawful age, produced on the part of the defendant, having been by me duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of the controversy herein, and being examined by W. C. WITTER, counsel for the defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. George W. Maltby; age, 30; occupation, superintendent, stone dealer, and street contractor for Whitmore & Brady.

Q. 2. How long have you been in this business?

A. About ten years.

Q. 3. What streets were the first that you superintended the work upon, or had to do with, and what was it?

A. Front street was the first, after the flood had torn out the pavement on Front street, from Main street north, to Market street, or about opposite Exchange Place.

209 Q. 4. When was that?

A. In 1865.

Q. 5. Mention the names of other streets upon which you have done work, or superintended work, previous to the year 1868?

A. Well, I think Rose street and another small street; I don't know the name of, it is down here, and I could not say whether there was any previous, or just after that time; I know that we paved quite a number of other streets.

Q. 6. Describe the size of the blocks which you used in the paving of all those streets, including Front and Race.

A. They were from two to three and a half inches thick, about eight inches deep, and from five, to perhaps, twelve or thirteen inches long.

Q. 7. State whether or not the thickness of any given stone was a uniform thickness from the top to the bottom, and end to end?

A. It was, substantially.

Q. 8. State whether they were laid in courses; what relation the courses bear to each other.

A. They were laid in courses, and each course was laid so as to break joints, and the ends of the stone were laid close together.

Q. 9. Break joints with what?

A. Break joints with the other course.

Q. 10. Which was the widest; the transverse joints or the joints running parallel with the street?

A. The transverse joints.

Q. 11. Which was the roughest; the sides of the stones, or the ends of them?

A. The sides.

Q. 12. What directions, if any, did you give your workmen in these particulars?

210 A. To be particular and dress the ends, so that they would come close together and true.

Q. 13. Why were the joints left open on the sides?

A. So as to give a foothold for the horses, and to fill with sand.

Q. 14. Why were the end joints made close?

A. So as to prevent any ruts forming in the street by cutting into the joints.

Q. 15. Do you know what kind of pavement was originally laid in Front and Brown streets?

A. Yes, sir.

Q. 16. State how it compares with the pavement you have described.

A. The same, substantially. The whole of Brown street was not paved with Medina stone; that is, the whole width; the gutters were paved with cobble; Front street was paved clear across with Medina stone.

Q. 17. State whether or not the stones touched each other on the sides at some points.

A. Yes, sir; they did.

Q. 18. Look at the model marked "Defendant's Exhibit, Rochester, No. 1," and state how that compares with the pavement laid in the various streets that have been mentioned in your examination in the particulars touched upon.

A. It is laid exactly in the same style.

Q. 19. State whether the pavement thus laid in the city of Rochester has been practically successful for the accomplishment of the two purposes of furnishing a foothold for the horses by reason of the open transverse joint, and of preventing the rutting by wheels by reason of the close end joints.

A. It has been successful.

Q. 20. Are the side joints in the defendant's exhibit marked "Rochester, No. 1," more open than the joints at the ends of the stone?

211 A. They are.

Q. 21. Has it been the practices in paving these streets you have mentioned, to have them exactly flat?

A. It is not.

Q. 22. How were they laid?

A. They were laid with a crown, differing in height, according to the width of the street, from six to twelve or fourteen inches.

Q. 23. State whether or not the effect of crowning is to keep the end joints tight?

A. It is for that purpose, and for forming an arch to keep the paving from settling, and let the water run off the street; that is another object, of course.

Q. 24. Have you examined the certified copy of the patent upon which this suit was brought?

A. I have.

Q. 25. As a practical man, acquainted with the laying of pavement, what sort of a pavement would you lay, following the specification and claim of that patent?

(Mr. Field objected, as calling for an opinion, as irrelevant, incompetent; and there is no testimony to show he is an expert in the construction and interpretation of written instruments, and no testimony to show that he is an expert in following written or printed directions in the laying of pavements. Received, subject to objection.)

A. The same as laid here in Rochester, and under the head of what is called the Medina pavement, and laid here for somewheres near seventeen or eighteen years, I should judge, to my knowledge.

GEO. W. MALTBY,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed this 25th day of March, 1875.

J. D. HUSBANDS,
Examiner.

212 CLARKSON, GEORGE G., a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by W. C. WITTER, counsel for the defendant, deposes and says, as follows:

Q. 1. What is your name, age, residence, and occupation?

A. George G. Clarkson. I am a tailor. I live in Rochester. I am sixty-three years old.

Q. 2. Are you mayor of the city of Rochester?

A. I am.

Q. 3. Do you know William S. Grantsynn, Benjamin Butler, and John McConnell?

A. I do.

Q. 4. What can you say as to their capability of laying pavement from printed or written description, and as to their reputation as honorable and truthful gentlemen.

(Mr. Field objected to so much of the question as to witness giving an opinion as to their capability, as incompetent, irrelevant, and that the witness is not an expert, and no foundation has been laid to show that he is an expert, so as to express an opinion as to the capability of any one performing a paving contract.

Received, subject to objection.)

A. Colonel Grantsynn is an engineer; I have been acquainted with him for a number of years, and to my own knowledge he is a capable man for his place, and has occupied that position for some years, and his general reputation as a surveyor is good; and, indeed, the citizens of Rochester speak of him in praise. Mr. Butler is a gentleman who has occupied the position he does, of street superintendent, for many years, and, I believe, has been engaged in the business of contracting to pave streets; and as a street superintendent he is a good judge of work, and his general reputation among the citizens is first-rate. 213

Q. 5. And John McConnell?

A. McConnell, I have no particular acquaintance with him. I am not as well acquainted with him as with Grantsynn or Butler, but his general reputation as a paver is excellent.

Q. 6. Does the position of city surveyor and street superintendent require men who are capable of performing the work asked about in the last question?

(Mr. Field objected as calling for an opinion, and as irrelevant and incompetent, and that the witness is not an expert.

Received, subject to objection.)

A. I shall answer that question by saying that I presume that to be the case, from the fact of the occupation of Mr. Butler; and the reputation of the surveyor, Col. Grantsynn.

GEORGE G. CLARKSON.
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed this 25th day of March, 1875, before me.

J. D. HUSBANDS,
Examiner.

ROCHESTER, N. Y., *March 25th, A. D.* 1875.

Adjourned by counsel to March 26, A. D. 1875, at the office of the examiner, at Rochester, N. Y., at 10 o'clock a. m.

J. D. HUSBANDS,
Examiner.

ROCHESTER, N. Y., *March 26th, A. D.* 1875.

Parties and counsel appear as on 25th, pursuant to the last adjournment above noted.

J. D. HUSBANDS,
Examiner.

214 ROCHESTER, N. Y., *March 26th*, 1875.

RANBER, JOHN, a witness of lawful age, and produced on the part of the defendant, having been by me first duly cautioned and examined, and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says, as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is John Ranber; age 39; I live on North Clinton street, Rochester. I am a contractor.

Q. 2. How long have you been acquainted with the pavement of Rochester, known as Medina stone pavement?

A. I think 19 or 20 years.

Q. 3. Are you sure as many as eighteen?

A. Yes, sir; I am sure of 18; I think it is 18 years.

Q. 4. Are you sure?

A. I think it is 18 years.

Q. 5. Are you sure it is seventeen?

A. I am sure it is seventeen.

A. I am sure it is seventeen—I am sure *on* that; it isn't less than seventeen, and I think it is more; I think it is twenty.

Q. 6. What is the size about of the stone that composes that pavement with which you have been acquainted for the last eighteen or twenty years?

A. Well, it is generally six inches to eight inches, width and height.

Q. 7. What has been the length?

A. We have them from six up to a foot.

Q. 8. What the thickness?

A. We lay them from two to four; we have them sometimes a little thicker.

215 Q. 9. State in what capacity you have had anything to do with the paving of streets during this period in Rochester.

A. Seventeen or twenty years ago I was furnishing sand for the pavement, and drawing stones, and drawing out dirt for the pavement, and so on.

Q. 10. And what next?

A. I should think about nine years ago, more or less; I bossed the first pavement. I had charge of the pavement; then, in 1870, we contracted—myself and my partner—for Medina pavement.

Q. 11. What has been the thickness of those stones; that is to say, take a stone that is two inches thick, that you call a two-inch thick stone—has it been of an uniform thickness?

A. Yes, sir.

Q. 12. And have they been of uniform length from top to bottom?

A. As near as we could get it; not exactly; some a little shorter than others.

Q. 13. Which, if either, has been the roughest, the sides of those stones, or the ends of them.

A. The sides, I think.

Q. 14. Which has been the smoothest?

A. The edge.

Q. 15. By the edge do you mean the ends of the stones?

A. The ends; yes, sir.

Q. 16. Which joint would be the wider joint, the joint that runs across the street, or the joint that runs parallel with the street?

A. The joint that runs parallel with the street; that is, across the street; across the street, that is what I mean.

Q. 17. Which joint has been the closest, the end joint or the side joint of the stone?

A. The end.

Q. 18. What has been the object of the wide joint at the sides of the stones?

216 A. They get in some sand to make it better traveling.

Q. 19. How does it make it better traveling?

A. Horses get hold traveling over; draft horses or teams.

Q. 20. Why has the end joint been closed?

A. Why to make a smooth pavement, of course; to make it nice to travel.

Q. 21. State whether or not the Medina pavement with which you have been acquainted from seventeen to twenty years, has been practically successful for accomplishing these two purposes; that is to say, of affording a foothold for the horses, and of making smooth pavement on the ends of the stones.

A. Well, it makes a safer thing for a horse to travel over it.

Q. 22. Will you mention the names of some of the streets which have been paved in the manner you have described?

A. Yes, sir. State street is one which I worked on. St. Paul street was the second; Main street was the third one; Oak street was the fourth one; Jay street was the fifth one; Pindle alley, which we contracted ourselves; Mumford street was the other one; Court street, by Court street bridge; there is Monroe avenue, which I done myself; that is, me and my partners; Fitzhugh street. There is four, I think, that I wasn't on the work; either four or five, I couldn't say or exactly mention.

Q. 23. Have you read a copy of the patent upon which this suit is brought?

A. Yes, sir; I have read the thing over.

Q. 24. As a practical man, following the description and claim of that patent, what sort of a pavement would you lay?

(Mr. Field objected as calling for an opinion incompetent and 217 irrelevant; and he is not an expert in the construction of written instruments; and there has no foundation been laid to show he has laid pavement in accordance with written or printed direction.

Received, subject to objection.)

A. I should lay just about the same pavement that we have here now.

Q. 25. And such a pavement as you have been familiar with from seventeen to twenty years?

A. Yes, sir; the same.

Q. 26. When you start at the curbstone with a two-inch thick block, state whether or not it is the rule to carry that whole course with the same thickness of block across the street.

A. Yes, sir; it is the rule to lay the same thickness right across.

Q. 27. State whether or not these payments have been laid generally exactly flat or a little crowning; how as to that?

A. A little crowning.

JOHN RAMBER,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed this 26th day of March, 1875.

J. D. HUSBANDS,
Examiner.

NORMINGTON, MARK, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by W. C. WITTER, esq., of counsel for defendant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

218 A. Mark Normington; age, 43; reside in Rochester; occupation, stone business; contractor, occasionally, including paving.

Q. 2. For how many years have you been familiar with the pavement of Rochester and Buffalo, laid with the Medina stone?

A. Nineteen years.

Q. 3. State about the size of the blocks which have been used for that pavement for these nineteen years.

A. Vary; about six to 12 inches in length; depth, about 8 inches; thickness, from 2 to 3½ and 4 inches.

Q. 4. State whether or not the individual stones composing the pavement have been of uniform thickness and a uniform length at the top and bottom.

A. Yes, sir; that is what our specification calls for generally.

Q. 5. What part of these stones have been the roughest; the sides or the ends?

A. The sides.

Q. 6. Where has the closest joint been formed; at the sides of the stone or at the ends?

A. The ends of the stone.

Q. 7. The stones have been, have they, of a uniform depth of about eight inches?

A. Yes, sir.

Q. 8. What has been the object of the wider transverse joints and the close end joints?

A. To prevent the end joints from rutting, wearing. The wider side joints naturally give the horses a better foothold.

Q. 9. Has the pavement been practically successful in accomplishing these two objects?

A. It has, to the best of my knowledge.

Q. 10. State whether or not you have ever been superintendent or foreman over gangs of men laying pavement.

219 A. I have over my own work.

Q. 11. Have you read a copy of the patent on which this suit is brought?

A. I have heard it read.

Q. 12. As a practical man, following the specification and claim of that patent, what sort of a pavement would you lay?

(Mr. Field objected, as it calls for an opinion incompetent, irrelevant; not an expert in construction of written instruments; no foundation to show the witness is an expert in the laying of payments in accordance with written or printed directions.)

A. I should lay the Medina pavement; it is virtually that.

Q. 13. By the Medina pavement do you mean the pavement you have been familiar with in Rochester and Buffalo for the last nineteen years?

A. Yes, sir.

Cross-examination waived.

MARK NORMINGTON.

(MEM.)—This was taken by counsel and witness, March 26, 1875, subject to being sworn to before me, and is by me read over to the witness and sworn, taken, and subscribed this 5th day of April, 1875, before me.

J. D. HUSBANDS,
Examiner.

VICINUS, WILLIAM, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and swornto testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by W. C.
220 WITTER, counsel for defendent, deposes and says, as follows:

Q. 1. What is your name, age, residence and occupation?

A. William Vicinus; my age is 42 years; occupation, contractor; residence is in Rochester, New York, No. 8 Concord avenue.

Q. 2. Have you ever had any experience touching pavement laid with Medina stone?

A. Yes, sir.

Q. 3. State what has been your experience, and in what different capacities you have been connected with?

A. I conclude that it makes a first-rate road—the Medina pavement.

Q. 4. Have you ever been foreman or superintendent in bossing gangs of men in the laying of this Medina stone pavement?

A. I have been foreman for six years for another firm here—for McConnell & Jones—but during that time we didn't lay down any Medina pavement; but since I am in the business myself, I have laid down the first Medina pavement in 1870.

Q. 5. For how long have you known of this Medina pavement being laid in the city of Rochester?

A. I should think about twelve years; but I have seen streets laid with Medina stone longer than that.

Q. 6. Will you state about the size of the stones which you know of having been laid, for twelve years, with this Medina pavement; that is, state about the length?

A. The length varies from six inches to twelve inches long, eight inches deep, from two inches to four or five inches surface, uniform thickness.

Q. 7. Have the stones been of uniform length from the top downward; that is to say, the same length at the top as at the bottom?

A. Yes, sir; with a very little variation on the bottom.

221 Q. 8. Have they been substantially of the same length at the top and bottom?

A. Yes, sir.

Q. 9. State which way they were laid across the street: lengthwise of the stone, or how?

A. Well, they were laid eight inches deep, from six inches to twelve inches.

Q. 10. If the stone was twelve inches long, how did it lay across the street: in the direction of the twelve inches, or how?

A. In the direction of the twelve inches, across the street.

Q. 11. Which face of the stone was roughest: the side of the stone or the end of the stone?

A. The side of the stone.

Q. 12. Where was the closest joint formed: at the ends of the stone or on the sides?

A. On the ends of the stones.

Q. 13. Which way did the side joint run across the street, or lengthways with the street?

A. Across the street.

Q. 14. What was the object of having the wide joint on the side?

A. For horses to get a good foothold, and get in some sand.

Q. 15. What was the object of the close joint on the end?

A. For driving over the streets so it wouldn't form no ruts.

Q. 16. State whether this pavement has been perfectly successful in accomplishing these two purposes?

A. Yes, sir; in every shape.

Q. 17. Mention some of the streets that you know and were laid of the kind of pavement you have described?

A. There is Oak street, Brown street, State street, East Main
222 street, Pindle alley, Court street, St. Paul, Monroe avenue, North
Fitzhugh street; there might be some more, but I don't recollect
names.

Q. 18. Have you read a copy of the patent upon which this suit is brought?

A. Yes, sir.

Q. 19. As a practical man, following the description and claim of that patent, what sort of a pavement would you lay?

(Mr. Field objected, as calling for an opinion; is irrelevant, incompetent. The witness is not an expert in the construction of written instruments, and no foundation has been laid to show that he is an expert in the laying of pavements in accordance with written or printed instruction.

Received, subject to objection.)

A. I would lay the Medina pavement.

Q. 20. You mean such a Medina pavement as you have given a description of in your deposition.

A. Yes, sir.

WILLIAM VICINUS,
By J. D. HUSBANDS,
Examiner.

Sworn, taken and subscribed this 26th day of March, 1875.
J. D. HUSBANDS,
Examiner.

BRIGGS, MARTIN, a witness of lawful age, and produced on the part of the defendant, having been by me first duly cautioned, examined and sworn to testify to the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says, as follows:

Q. 1. What is your name, age, residence and occupation?

223 A. Martin Briggs; my age is sixty-seven; my occupation is working in iron manufacturing; of Rochester, New York.

Q. 2. Did you hold any office under the city governmen' of Rochester: if so, what?

A. One of the commissioners of the board of public works.

Q. 3. How long have you been on that board?

A. Two years.

Q. 3. Have you ever held any other office under city government: if so, what, and for how long?

A. I have held office under the city government as alderman; I think four years.

Q. 5. Has it been a part of your duty, as member of the commission of public works, to be acquainted with the different kinds of pavement, and, among others, that known as the Medina pavement, in the city of Rochester?

A. It is.

Q. 6. State whether, previous to your holding office, you had opportunities, and made yourself acquainted with the character of the work, and give some particulars about it.

A. Does that mean my first office, or the present one?

Q. 7. It means either, and at any time.

A. It has been.

Q. 8. What pains did you take to become acquainted with it?

A. Well, to see how it was done, and the best means of doing it.

Q. 9. Were you ever the means of some of it being taken up and relaid?

A. I was.

Q. 10. For how many years have you been acquainted with this kind of pavement laid with Medina stone?

224 A. The first pavement, I think it was done over twenty years ago, in the street that I used to live in; I don't know as I lived there at that time; I formerly lived there.

Q. 11. Referring now to the blocks which constituted the Medina pavement, with which you have been familiar for twenty years, state which face of the stones has been the rougher; the sides or the ends of the stones, if either.

A. We designed to have the sides; not so particular about the sides as we were about the ends.

Q. 12. Where were the closest joints formed, on the ends or on the sides?

A. On the ends.

Q. 13. Why were they more particular to have the close joints on the ends?

A. The argument was, that having the close joint on the ends prevented the wheel from rutting the street.

Q. 14. Why was the side joint left more open?

A. For the purpose of putting the sand in to fill up the space between the two stones.

Q. 15. In which direction relatively to the street did the side joints run?

A. Across the street.

Q. 16. And the end joints?

A. Running parallel.

Q. 17. What was the shape of the stones that were laid to form this Medina stone pavement?

A. Generally eight inches deep and six to eight inches in width; they varied as to width; some might be six inches and some eight, and possibly some ten. We were careful to break joints laying that way.

Q. 18. When you say six, eight, and ten inches in width, which direction relatively to the street do you mean?

A. Running across the street.

Q. 19. About what was the thickness of the stones?

225 A. Well, they varied some; my notion about it was that they should not be less than two inches thick, and not to exceed three.

Q. 20. Do you mean that the same stone varied in thickness or the different stones?

A. They varied in thickness, different stones; if we started a course two inches, we generally run it across the street two inches thick; if we started at three inches we run it across three inches, so as to keep it of a uniform thickness running across the street.

Q. 21. State whether or not the stones were substantially of the same length at the top as at the bottom: that is to say, each particular stone?

(The defendant's counsel here exhibits to witness a memorandum book to indicate what he meant by length.)

A. The specifications, I think, always call for that—the same width at the bottom as at the top.

Q. 22 Will you mention some of the streets that have been paved in the manner that you have given a description of?

A. State street, between Platt and the railroad track.

Q. 23. Mention others, if you think of any.

A. The first street paved was between what is called Centre street and Platt street, by a man from Buffalo. That was the first street that I know of that was put down in the city of Medina stone.

Q. 24. State whether the streets that have been laid in *the* manner have, in your opinion, been practically successful in affording a foothold for horses, and in preventing ruts from wheels.

A. I think they have.

Q. 25. Have you read or heard read a copy of letters patent upon which this suit is brought?

226 A. I heard it read this morning; I think I looked it over myself—if those are the specifications, there—

(Witness pointed out a printed copy of the specification to Charles Guidet.—J. D. H.)

Q. 26. Following the description and claim of that patent, what sort of a pavement would you lay or have laid?

(Mr. Field objected, as calling for an opinion; as incompetent and irrelevant; the witness is not an expert in the construction of written instruments, and there has no foundation been laid to show that the witness is an expert in the laying of pavement in accordance with written or printed instructions.

Received, subject to objection.)

A. My opinion is that this description of this patent and claim is a very good copy of our pavement.

Q. 27. State whether or not Mr. Brady, Mr. McConnell, Mr. Butler, Mr. Grantsynn, Mr. Ranber, and Mr. Vicinus, who have been examined as witnesses in this cause, have been accustomed to lay stone pavements from printed or written descriptions.

(Mr. Field objected, as incompetent, irrelevant, and not the proper mode of proof.

Received, subject to objection.)

A. Mr. Grantsynn is city surveyor; I don't know that he ever laid any, but he has had the supervision of a good many streets. Mr. Butler has been street superintendent for a good many years, and has a good deal of experience in looking after these improvements, and,
227 I think, has laid some streets, but how many, I don't know. The other men mentioned here are contractors, and are first class contractors, and are capable of doing a good job.

Q. 28. Have they been accustomed to lay pavements according to written or printed descriptions?

A. Yes, sir.

MARTIN BRIGGS,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed this 26th day of March, 1875.

J. D. HUSBANDS,
Examiner.

SEELYE, LEWIS, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth, being examined by W. C. WITTER, counsel for defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Lewis Seelye; well, they are all the masculine gender here, I might as well say it, it is sixty-five; I am a widower a good many years, and I don't allow everybody to know just how old I am; residence, Rochester, New York; my occupation has been varied somewhat; I used to be a forger and iron-worker; we forged iron to be finished. A blacksmith is a man that mends old wagons, shoes horses, etc.

Q. 2. What public office, if any, did you hold and have held in the city of Rochester?

A. I don't hold any at present, sir. I have been an alderman a good many years, and a supervisor, and so on.

228 Q. 3. What office have you held, if any, under the United States Government?

A. Well, sir; member of Congress.

Q. 4. Have you ever held the office of chief of street commissioners?

A. No, sir.

Q. 5. Chairman?

A. You mean to ask me if I have been chairman of the street committee. The board of public works are the street commissioners now, and they have only existed two years past.

Q. 6. Have you ever been chairman of the street committee in Rochester?

A. Yes, sir.

Q. 7. Are you acquainted with the stone pavement that has been laid in the city of Rochester, with stone known as Medina stone?

A. Yes, sir.

Q. 8. For how many years?

A. Twenty-five at least.

Q. 9. Have your duties as chairman of the street committee required you to be acquainted with the peculiarities of this pavement?

A. Yes, sir; a man must be acquainted with it to do his duty.

Q. 10. For how many years have you been acquainted with this class of pavement?

A. Well, sir, over twenty; the first street that was paved with Medina stone was Frank street, in Rochester, and that was between what we now call Centre street and Platt street; it was done by a Buffalo gentlemen; Mr. Holloway, I think.

Q. 11. I will now ask you about the characteristics of this pavement, with which you have been acquainted for more than twenty years, state about what was the length of the blocks.

229 A. My specifications were always made up by myself, and the length was always put down at eight inches, eight to ten inches lengthwise. If they were a foot we didn't object to it particularly, but the width we did.

Q. 12. I mean the up and down of the stone.

A. That was about eight inches.

Q. 13. Stones of what thickness were used?

A. Well, sir, State street down here, which I think is the best pavement we ever had; in the first place, if I am to be allowed to give a description of Brown street, which was the first street I had anything to do with, the stones were of promisc'ous thickness; it occurred to me that the thicker the stone was from four to six inches, the less liable it would be to cut down; at all events, I wouldn't allow one thick stone and one thin one, for the thick one would be apt to go down, and the thin one would stick up, which would make a bad street. Brown street was improved in that way. The next came State street, and I got up the specifications myself, and I made out that no stones should be less than one and one-half thick, and not over two inches or two and a half. The thick one would be apt to stick up, and the thin one would go down just the other way.

Q. 14. Will you please to state which face of the stone in this pavement is roughest; the sides or the ends.

A. Oh, the sides, of course.

Q. 15. Which joint was the widest; the joint across or the joint parallel with the street?

A. Running across the street.

Q. 16. What was the purpose of having that joint wider than the end joint?

A. Well, so that the horses would, if it was necessary to have heavy loads, *would* be apt to catch their corks in there, and it would pull a

little better; that was filled up with sand very nicely; but the
230 sand would give and the stone wouldn't; we took particular
pains with the end joints, and not so much with the other, and
that naturally left it more open.

Q. 17. State whether or not these stones were substantially of regular shape.

A. Oh, yes; they had to be; oh, yes, sir; they varied in length, but were precise in width; some were a little longer than others across the street, but all of the same depth so as to have the same bearing.

Q. 18. And in any given course of stone across the street was the whole course of substantially the same thickness lengthways and up and down?

A. Yes, sir; they were required to assort them; so, if a course commenced for two inches to be two inches clear across the street; and if they wanted a two and a half-inch stone that was put clear across the street in such a manner as to break joints always.

Q. 19. Have you read, or heard read, a copy of letters patent upon which this suit is brought?

A. Yes, sir; I read it this morning.

Q. 20. Following the specification and claim of that patent, what sort of a pavement would you lay or have laid?

(Mr. Field objected, as calling for an opinion; irrelevant, incompetent; he is not an expert in the construction of written instruments, and there is no foundation laid to show that he is an expert in the laying of pavement in accordance with written or printed instructions.

Received, subject to objection.)

A. Just what we have laid.

Q. 21. State whether Mr. Brady, Mr. McConnell, Mr. Butler, Mr.
Grantsynn, who have been examined as witnesses in this case,
231 have been accustomed to lay pavement in accordance with written or printed instructions.

(Mr. Field objected, as irrelevant and incompetent, and not the proper mode of proof.

Received, subject to objection.)

A. Oh, yes; that has been their business for the last twenty years, and they are considered first-class street contractors; as far as ever I knew, considered honest men.

Q. 22. State whether or not the pavement which you have been describing has been a practically successful pavement; among other things, affording a foothold for the horses, and the prevention of ruts by vehicles?

A. Yes, sir; I think State street; were it not having it taken up occasionally, or parts of it, for sewers or gas pipes or water pipes, it would have been as good to-day as it was the day it was finished, and that was fifteen or eighteen years ago; just as good exactly; there is no end to its wear.

LEWIS SEELYE,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed this 26th day of March, 1875.

J. D. HUSBANDS,
Examiner.

BEARDSLEY, CYRUS, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Cyrus Beardsley; I am 49; occupation, surveyor and civil engineer; I live in Rochester.

232 Q. 2. For how many years have you followed that occupation?

A. About twenty-five.

Q. 3. Are you acquainted with the character of the pavement of the streets of Rochester which are laid with Medina stone?

A. I am.

Q. 4. For how many years have you been familiar with the streets of Rochester paved with Medina stone?

A. Since 1861.

Q. 5. What is the shape of the block which has been used from that time to the present in the pavement of the streets of Rochester with Medina stone?

A. It has six sides, and opposite sides are parallel.

Q. 6. State whether or not the opposite sides are also equal to each other.

A. They are as near as may be; they are intended to be so.

Q. 7. Which surface of these blocks is the rougher, the sides or the ends?

A. The ends are cut to a close joint; they are intended to be.

Q. 8. In which direction does the widest joint run?

A. Across the street.

Q. 9. Are those characteristics which you have mentioned, the characteristics of the Medina stone pavement which has been laid in the city of Rochester from the time you became familiar with it to the present?

A. The same; there is no change so far as the shape of the stone is concerned.

Q. 10. Mention some of these streets of which you are acquainted, as having been paved with the stones of the description, and possessing the characteristics mentioned?

A. There is Frank street; I think it is the first street paved; and Brown street, State street, Main street, Allen street, Mill street, Front street, and several others.

233 Q. 11. Have you heard read a copy of the patent upon which this suit is brought?

A. I heard read what is said to be a copy.

Q. 12. How do the description and claim of that patent accord with the peculiarities and characteristics of the Medina stone pavement which you have described?

(Mr. Field objected, as calling for an opinion incompetent and irrelevant; he is not an expert in the interpretation and construction of written instruments, and there is no foundation to show that he is an expert in the mode of laying pavement, in accordance with any written or printed instruction, and it is not the proper mode of proving it.

Received, subject to objection.)

A. From what I heard read my opinion is they are very similar.

Q. 13. Can you specify any difference?

A. I don't think I could from what information I have in regard to those specifications.

By Mr. FIELD:

Q. 14. Is there any difference in the mode of laying the shape of the stone you have described, during the time you say it has been laid?

A. Specifications may vary in some particulars slightly; there is a little difference, I think, in the mode of laying them, since I have become acquainted with them.

Q. 15. They have always been laid in the same way?

A. Substantially the same.

CYRUS BEARDSLEY,
By J. D. HUSBANDS,
Examiner.

Sworn, taken and subscribed this 26th day of March, 1875.

J. D. HUSBANDS,
Examiner.

234 HEBARD, HENRY S., a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says, as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Henry S. Hebard; about 48 years old; I live in Rochester, N. Y.; and my occupation, marble dealer.

Q. 2. Have you ever occupied any position under the city government which has caused you to become acquainted with the streets of Rochester, and the manner in which they are paved?

A. I have, sir.

Q. 3. State what position you have occupied?

A. I occupied a position as a member of the improvement committee; I think two years chairman of the same committee; two years in the common council, and also a year in the board of public works.

Q. 4. Has it been a part of your duty, while filling this position, to know or understand the character of the pavements laid in the city of Rochester?

A. It has been.

Q. 25. Are you acquainted with the paving which has been laid in the city of Rochester from Medina stone?

A. I am.

Q. 6. For how many years have you been familiar with that pavement and its characteristics?

A. I should think for twenty-five years.

Q. 7. How many years can you say certainly?

A. Well, I think Front street was improved about twenty-five years
ago, as near as my memory serves me without reference to the
235 data at home; and that was the first street that was paved with
Medina stone in Rochester.

Q. 8. And you have been acquainted——

A. From that time to the present.

Q. 9. What is the shape of the blocks which have been used from that time to the present in laying this pavement?

A. The sides were parallel; all sides were parallel; supposed to be as near as they may be, from the chisel, and about eight inches long, and eight inches deep, and from eight to ten inches long, and from three to four inches in thickness; some as thin as two inches have been used, but the average is about four inches; we mean to have it between three and four.

Q. 10. State whether or not the opposite surface of those stones are substantially equal to each other.

A. They should be by contract in the specifications. They are supposed to be, but of course they are not always so.

Q. 11. How was it as a general thing?

A. As a rule they are so.

Q. 12. Which surface was the roughest; the sides or the ends of the stone?

A. The sides.

Q. 13. Which was trimmed most; the sides or the ends?

A. Well, the ends were intended to be trimmed to make the closest joint; the sides were left a little rough, more so than the ends.

Q. 14. Did you ever cause any of this pavement which had been laid to be taken up for any purpose?

A. Yes, sir; I have.

Q. 15. For what purpose?

A. For different purposes; either because they were poorly laid, and
also because the ends were not trimmed close enough. The inten-
236 tion was to have the joints as close at the ends as it is possible to
get them, to avoid rutting the streets.

Q. 16. Why were they left more open on the sides?

A. The specifications required they should be about quarter of an inch joint; if we got a joint equal to a half or three-quarters of an inch was more satisfactory than a quarter-inch joint, for the purpose of filling it in with gravel and pounding it in with pounders for the purpose of giving a foothold to horses in going along the street.

Q. 17. Have you been accustomed to see that these pavements conformed to the written or printed specifications?

A. I have, sir.

Q. 18. Who laid them under such specifications? mention the names.

A. The firm that built State street was the firm of Whitmore, Carson & Co.; it is now the firm of Whitmore, Brady & Co. A man named David Wagner built some; he is now dead. The firm, Ramber & Vincent, built some, and the firm of Whitmore & Co., that is another, besides Whitmore & Brady also built some.

Q. 19. How about McConnell?

A. John McConnell built several of those streets.

Q. 20. State whether, in your opinion, these men whose names you have mentioned were men capable of laying stone pavement in accordance with written or printed description; whether they have actually done so.

(Mr. Field objected, as calling for an opinion irrelevant and incompetent; the witness is not an expert in the interpretation of written instruments, and no foundation has been laid to show he is an expert in the laying of pavements in accordance with written or printed instructions.

Received, subject to objection.)

237 A. They were capable of doing it and did so, as far as any
contractor could do that kind of work. All contractors will
avoid living up to specifications as far as may be; it is very profitable
to them to do so, and I have yet to see the exception—the same as in
New York.

Q. 21. State in what direction the rough side of the stone lay—whether across the street or in the direction parallel with the street.

A. Across the street.

Q. 22. State whether or not the pavement which you have described has been a practically successful one for attaining the objects you have mentioned.

A. I think it has, sir.

Q. 23. Have you read a copy of the patent upon which this suit is brought, or heard it read?

A. I did this afternoon, sir; a copy was handed me for the purpose of being read.

Q. 24. Following the description and claim of that patent, what sort of a pavement would you lay or cause to be laid?

(Mr. Field objected, as calling for an opinion irrelevant and incompetent; he is not an expert either in the construction or interpretation of written instruments or the laying of pavement, and no evidence has been given to lay a foundation for the introduction of such proof.

Received, subject to objection.)

A. It would be a pavement similar to our Medina pavement, sir.

Q. 25. Will you please give the names of streets which were paved with blocks of the description which you have given and in the manner you have stated, since you have been acquainted with them

238 A. State street, Monroe avenue, South street, Paul street, Front street, Water street, Fitzhugh street; there are several other streets that I don't call to mind just now.

HENRY S. HEBARD,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed before me March 26, 1875.

J. D. HUSBANDS,
Examiner.

The examiner adjourned the further taking of testimony to the 27th day of March, at ten o'clock a. m., at the Tifft House, Buffalo, New York, at the request of the counsel for defendant; the complainant's counsel being notified thereof by the examiner.

J. D. HUSBANDS,
Examiner.

ROCHESTER, N. Y., *March* 26, 1875.

BUFFALO, NEW YORK,
Tifft House, March 27, 1875.

Parties and counsel appear as at Rochester, on 25th and 26th of March, 1875.

J. D. HUSBANDS,
Examiner.

BUFFALO, *March* 27, 1875.

Parties met pursuant to adjournment.

Present, counsel as before, at Rochester.

REIMAN, JACOB, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says, as follows: 239

Q. 1. What is your name, age, residence, and occupation?

A. Jacob Reiman; forty-four years old. I live in Buffalo. I am a paver.

Q. 2. With what stone have you been a paver?

A. Mostly Medina sand stone.

Q. 3. For how many years have you been a paver of Medina stone in Buffalo?

A. Between 22 and 24 years.

Q. 4. Have you also dressed these stones for paving?

A. Yes, sir; some of the time; not all the time; we have not dressed them all the time; but sometimes we dressed them.

Q. 5. Name the streets which you have paved at the time they were originally paved with Medina stone.

A. West Swan street, Main street, part of Main; Genesee street, Erie street, Chicago street, Louisiana street, and them streets around them markets, West Market and Niagara street; part of it on Forrest avenue.

Q. 6. I will now ask you the character of the stone that you paved in these streets and their manner of paving. State what was the size of the stone, as near as you can; that is, how long they were as a general thing; how deep they were up and down, and how thick.

A. They generally were eight-inch square stones, most of the work.

Q. 7. How thick were they?

A. Well, they were different kinds; three or four inches, two inches, and two inches and a half.

Q. 8. How long were they?

A. From eight to ten inches; some were shorter.

Q. 9. You have said that you were accustomed sometimes to dress these stones; which did you dress the most; the sides of the stones or the ends of them?

240 A. The ends of the stones.

Q. 10. Which were left the roughest, the sides of the stones or the ends?

A. The sides of the stones were left the roughest.

Q. 11. State in what direction the stones lay with the streets?

A. Across the street.

Q. 12. Which joint was the widest, the joint at the sides of the stones or the joints at the end?

A. The sides of the stone.

Q. 13. Which way did the joints at the sides of the stones run?

A. Across the street.

Q. 14. What directions, if any, have your foremen given you regarding the joints?

A. They give directions; they cross the street, but leave them a little opener than the others, so they wouldn't wear in ruts by the wheels having a chance to cut in.

Q. 15. What kind of a joint did they tell you to make at the ends of the stones?

A. As close as we could get it together.

Q. 16. Did you do so?

A. Yes, sir.

Q. 17. In trimming the stones for laying, which did you trim the most, the sides or the ends?

A. The ends.

Q. 18. If you started to lay a course of stones with a two-inch block, state whether or not you continued the whole course with that width of stone, or whether you changed and used different widths.

A. About the same course.

Q. 19. Do you mean by your last answer that you used the same thickness of stones?

A. Yes, sir; and sometimes we made two out of one.

241 Q. 20. During the 22 or 24 years that you have been a paver, state who have been your foremen at different times?

A. Bill Holloway, George Allen, Tom Phillips, John Love; that is about all.

Q. 21. State whether or not you have laid pavement in Buffalo of the character which you have mentioned before John Holloway died?

A. Yes, sir.

JACOB REIMAN,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed this 27th day of March, 1875.
J. D. HUSBANDS,
Examiner.

JOHN FREI, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. John Frei; age, forty-four; Buffalo, New York; I am a paver.

Q. 2. What sort of stone have you been a paver of mostly?

A. Medina stone.

Q. 3. For how many years have you been paving with Medina stone in Buffalo?

A. Twenty-two years.

Q. 4. What streets have you paved or assisted in paving in Buffalo at the time of their being originally paved with Medina stone?

242 A. Well, there is part of Delaware street, part of Genesee street, a part of West Swan street, Chicago street, Louisiana street, Sixth street, Ninth street, Maryland street, part of Tenth street, part of Palmer street, and, I guess, that is enough.

Q. 5. I will now ask you the characteristics of the stones which you used in paving these streets, and the manner of laying them; state what size they were at the top as compared with the bottom.

A. They were eight inches square—generally eight inches square.

Q. 6. How thick were the stones?

A. Well, they were sometimes from two to four inches; three inches and a half.

Q. 7. How long were they?

A. Well, they were generally from about eight or ten inches.

Q. 8. State how they were laid with reference to the street.

A. Across the street.

Q. 9. Do you mean lengthways across the street?

A. The lengthways across the street.

Q. 10. Did you also assist sometimes in dressing these stones that were laid in the streets you have mentioned?

A. Yes, sir.

Q. 11. Which surface, if either, did you dress the most, the sides of the stones or the ends of them?

A. The ends of the stones.

Q. 12. Which did you leave the roughest, the sides or the ends of them?

A. The sides.

Q. 13. State whether or not you observed the same practice in trimming the stone previous to laying?

A. Well, of course, we had to trim the sides more so there wouldn't be ruts.

243 Q. 14. Which did you trim the most, the sides or the ends?

A. The ends.

Q. 15. Did you mean to say in your last answer but one that you trimmed the sides most?

A. No, the ends.

Q. 16. Which joint did you leave the most open, the joint at the side of the stone or the joint at the end?

A. The side.

Q. 17. What is the object of the open joint at the side?

A. The stone on the sides we got sometimes a little lump; that is the reason we left it a little open on the sides.

Q. 18. Why did you want a close joint on the end?

A. So it wouldn't cut in ruts on the sides.

Q. 19. Do you mean ruts on the side or ruts on the ends?

A. On the ends.

Q. 20. Did you ever lay any of the pavement of the description you have described, and dressed and trimmed in that manner before John Holloway died?

A. Yes, sir.

Q. 21. State whether or not these stones are laid so as to break joints?

A. Yes, sir.

Q. 22. Did you put anything between the sides of the stones after it was laid or during the laying, and if so, what?

A. Well, we put sometimes a little gravel in.

Q. 23. Wasn't it the usual practice to put gravel in.

A. Yes, sir.

JOHN FREI,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed this 27th day of March, 1875.

J. D. HUSBANDS,
Examiner.

244 MICHAEL KLEIN, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by Mr. W. C. WITTER, counsel for defendant, deposes and says, as follows:

Q. 1. What is your name, age, residence and occupation?

A. Michael Klein; forty-one years old; Buffalo; I am a paver.

Q. 2. What sort of stone have you paved mostly in Buffalo?

A. Medina sandstone.

Q. 3. What streets have you paved with Medina sandstone at the time they were originally paved.

A. Part of Maine street, Niagara street, West Swan street, Chicago street, Louisiana street, Ohio street—part of it—Niagara, Ninth street Sixth street, Maryland street, Seventh street, Palmer street, part of Forest avenue; that is as much as I think of now; there was Elk street, Exchange street, that is just as is need for, that I can think of any way; there are lots more besides.

Q. 4. Name some of the men who have been your foremen in paving these streets with Medina sandstone?

A. William Holloway, first; George Allen, second; Thomas Phillips the third, and Mr. Love, that is our foreman now.

Q. 5. Have you also served as stone dresser as well as paver, sometimes?

A. Yes, sir.

Q. 6. In preparing the stones for the pavement you have laid in the streets you have mentioned, which did you dress and trim the most, the sides or the ends of the stones?

245 A. The ends of the stone.

Q. 7. Which did you leave the roughest, the sides or the ends of the stones?

A. The sides.

Q. 8. Which way did you lay the stones, in reference to the street?

A. Crossways with the street—across the street.

Q. 9. Do you mean by that answer, that you laid the lengthways of the stones crossways with the street?

A. Yes, sir.

Q. 10. Where did you form the close joint; at the ends of the stone, or at the sides?

A. On the ends.

Q. 11. Why did you leave wider joints on the sides of the stones?

A. So that the horses could catch hold.

Q. 12. State whether you have laid pavement in the manner you have described, and with blocks possessing the characteristics you have mentioned, before the death of John Holloway.

A. Yes, sir.

Q. 13. Who directed you to lay the pavement in the manner you have described?

A. Well, my foreman.

MICHAEL KLEIN,
By J. D. HUSBANDS,
Examiner.

Sworn, taken and subscribed, March 27th, A. D. 1875, before me.
J. D. HUSBANDS.
Examiner.

246 JOHN LOVE, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says, as follows:

Q. 1. What is your name, age, residence, and occupation?

A. John Love; thirty-nine years; residence, Buffalo; I am superintendent of paving streets, and foreman for Isaac Halloway.

Q. 2. How long have you been foreman for Isaac Holloway in the paving of the streets in Buffalo?

A. Since April, 1855, twenty years next month.

Q. 3. What stone has been used in the pavement of the streets of Buffalo mostly?

A. Medina stone.

Q. 4. Where is this stone dressed?

A. On the streets where they are used.

Q. 5. Where are they trimmed?

A. On the streets where they are used.

Q. 6. Does the same person usually dress that trims the stone—does the same man dress and trim them at the same time?

A. It is the same thing; I could explain that: the stones are dressed square at the quarries before sent here, to prevent wastage, and then they are redressed when landed on the streets where they are used; dressed or trimmed.

Q. 7. Then, if I understand you correctly, the man who puts the stone in the road-bed both dresses and trims it. Am I right? If not, please put me right.

A. The dressing and trimming is the same thing, is the way I understand it, and the man that puts them in the road bed that is the paver; they do sometimes, but not usually; they are not accustomed to do so.

247 Q. 8. What streets of Buffalo have you superintended the original paving of with the Medina stone as foreman?

A. Well, a good many miles of it; there is Lake street, from Erie crossing to Seneca street, Clinton street from the central crossing to the city line; Walnut street, Cedar street, Hickory street, Williams street, Niagara street, Virginia street, Seneca street, Swan street; I could think of forty or fifty more, perhaps.

Q. 9. Go ahead; think of them.

A. Elk street, Ohio street, Fulton street.

Q. 10. In the streets you have mentioned, the pavement of which was superintended by you, with Medina stone, give about the size of the blocks that were used; I mean the length, depth, and thickness.

A. The stones are broken about eight inches deep, from two to four inches thick, and about eight inches long.

Q. 11. State what is the relative thickness and length at the top as compared with the bottom.

A. The same.

Q. 12. State what is the relative depth at the two ends.

A. Let me understand your question.

Q. 13. That is whether the depth is the same at one end of the block as it is at the other end?

A. Yes, sir.

Q. 14. How have the blocks been laid relatively to the street?

A. Crossways.

Q. 15. Where the blocks of one course laid immediately behind the blocks of the preceding course; how as to that?

A. They were carried in courses across the street; one course would be carried immediately preceding the course.

248 Q. 16. What I mean to inquire is, whether the stones of one course break joints with the stones of the preceding course?

A. Yes, sir.

Q. 17. What directions, as foreman, have you been in the habit of giving your men regarding the trimming and dressing of the blocks?

A. To dress them square.

Q. 18. Which surface, if either, did you instruct them to dress the most, the sides or the ends?

A. The ends.

Q. 19. Why?

A. In order to make a good joint.

Q. 20. What do you mean by a good joint?

A. A close joint.

Q. 21. Which surface of the stones was actually left the roughest, the sides or the ends?

A. The sides.

Q. 22. Why?

A. It is more difficult to dress any lump or unevenness that may be on the sides of the stone than there is on the ends, and we are not as particular about it.

Q. 23. Which joint was left the widest, the joint at the side of the stones or the joint at the ends?

A. The sides.

Q. 24. What object, if any, was secured by the wide joint at the sides?

A. It made a foothold for animals.

Q. 25. State what, if anything, was placed between the stones?

A. Gravel.

Q. 26. State whether or not this Medina pavement, laid as you have stated, has been practically successful in accomplishing the two purposes which you have mentioned?

A. It has.

249 Q. 27. Why was the end joint directed to be made closer?

A. To prevent rutting.

Q. 28. Has the pavement been successful for this object?

A. Yes, sir.

Q. 29. How many miles of pavement should you judge, in the city of Buffalo, have been laid under your superintendence, or to your knowledge, with Medina pavement, of blocks possessing the characteristics which you have mentioned? I mean give a rough estimate.

A. It is a matter I haven't thought of; well, fifteen miles, I guess.

Q. 30. Has it been your practice and that of your employers and other contractors in the city Buffalo of to lay pavement from printed or written descriptions.

A. Yes, sir; from printed specifications.

Q. 31. Have you read a copy of the patent on which this suit is brought?

A. I have.

Q. 32. As a practical man, following the description and claim of that patent, what sort of a pavement would you lay or cause to be laid?

(Mr. Field objected, as calling for an opinion, incompetent, is irrelevant; calls for an opinion as an expert as to construction of written instruments; and there is no foundation laid to show he is an expert in the laying of pavement in accordance with written or printed instructions.

Received, subject to objection.)

A. A pavement similar to this that is laid in Buffalo.

Q. 33. What do you mean by similar; what do you wish to be understood by the word similar?

A. Such a pavement as this in front of this hotel.

250 Q. 34. How long has this in front of this hotel been laid?

A. I couldn't tell you; it was laid before I came here.

Q. 35. When did you come here?

A. In April, 1855.

Q. 36. State whether or not the stones that composed the pavement that you have described had their opposite surfaces equal and parallel substantially.

A. They have; yes, sir.

Q. 37. The question is whether they had; were they so laid with their opposite faces equal and parallel?

A. Yes, sir.

JOHN LOVE,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed March 27th, A. D. 1875, before me.
J. D. HUSBANDS,
Examiner.

George E. Mann, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined and sworn to testify the truth, the whole truth and nothing but the truth, in the matter of controversy herein, and being examined by W. C. Witter, counsel for defendant, deposes and says, as follows:

Q. 1. What is your name, age, residence and occupation?

A. George E. Mann; residence, Buffalo; age, twenty-nine; occupation, civil engineer; at present city engineer.

Q. 2. Do you mean city engineer of the city of Buffalo?

A. City engineer of the city of Buffalo.

251 Q. 3. What are some of the duties of the city engineer of the city of Buffalo?

A. Take general charge of public works.

Q. 4. State whether or not that includes the pavement of the streets?

A. It does include the pavement of the streets.

Q. 5. How long have you been city engineer of the city of Buffalo?

A. This is my second year.

Q. 6. Have your duties required you to become acquainted with the pavement of Buffalo, which has been laid with Medina stone, and with its characteristics?

A. Yes, sir.

Q. 7. How have you become acquainted with the pavement that has been laid with Medina stone, and with its characteristics, which was laid previous to your term of office?

A. By repairs that have been made upon that pavement.

Q. 8. How have you become acquainted with the characteristics of this pavement which has been laid during your term of office?

A. By watching it in its course of being put down.

Q. 9. Do you refer, in your answers, in speaking of the streets of Buffalo, among others, to those which you have heard mentioned this morning by the witness, Love?

A. I do refer to them; yes, sir.

Q. 10. State the shape of the blocks which have been laid in the pavement which you have referred to.

A. Substantially they are parallelopipedons, rectangular in form.

Q. 11. Which surface, if either, has been left the roughest; the sides or the ends of the stones?

A. The sides.

Q. 12. Which way do the sides run compared with the street?

252 A. Transversly.

Q. 13. Which joint has been made the closest?

A. End joint.

Q. 14. Has it been your duty to require that this should be so?

A. It has.

Q. 15. State about what is the average length of stones employed.

A. Eight or ten inches.

Q. 16. And the depth?

A. About eight inches.

Q. 17. And the thickness?

A. Two to four inches, average.

Q. 18. What contractors or foremen are you acquainted with who have superintended work upon the streets referred to?

A. John Love, foreman for Isaac Holloway; George B. Allen, contractor; Gibe, foreman for his father; and, I guess, those are the only ones I know.

Q. 19. State whether they have been accustomed to work from written or printed specifications.

A. From printed specifications.

Q. 20. State whether you, as city engineer of Buffalo, consider these men whom you have mentioned as capable of laying pavement from written or printed descriptions or specifications.

(Mr. Field objected, as calling for an opinion and as incompetent.

Received, subject to objection.)

A. I think they are.

Q. 21. Have you examined the patent upon which this suit is brought?

A. I have.

253 Q. 22. Following the description and claim of that patent, what sort of a pavement would you cause to be laid?

(Mr. Field objected, as calling for an opinion irrelevant and incompetent, and he is not an expert.

Received, subject to objection.)

A. Such as we are laying here at present, and have laid heretofore.

GEORGE E. MANN,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed March 27, A. D. 1875, before me.

J. D. HUSBANDS,
Examiner.

JAMES CLARK, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. James Clark; forty-four years old next August; residence, Buffalo; occupation, dressing paving stones.

Q. 2. What stone have you been in the habit of dressing?

A. Medina sandstone.

Q. 3. For how many years?

A. Twenty-nine years, off and on.

Q. 4. For what streets? Mention some of them.

A. For Exchange street, Ohio, Main street, Erie street, Terrace, Washington, Seneca, Wells street, Swan street, Niagara 254 street, Pennsylvania street, Ninth street, Tenth street, Wadsworth street, Forrest avenue, and several others, I think of.

Q. 5. Which surface have you been directed to dress the smoothest, the sides or the ends?

A. The ends.

Q. 6. Why were the ends dressed the smoothest?

A. To make a better joint and keep the pavement tighter together, so there would be no ruts in the streets—close joints.

JAMES CLARK,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed March 27th, 1875, before me.

J. D. HUSBANDS,
Examiner.

NICHOLAS KURTZ, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Nicholas Kurtz; I am 57 years of age; I live in Buffalo; my business is paving.

Q. 2. What kind of stone?

A. Most we pave what is called square stone.

Q. 3. Do you mean the Medina stone?

A. Medina stone.

Q. 4. How many years have you been a paver of Medina stone?

A. I commenced about 1849 first; about 27 years, I think.

255 Q. 5. What streets have you worked or paved with Medina stone?

A. Main street was the first; then Niagara street; then we got down on the other side of the city to Elk street, and we go down to Exchange street, and to Seneca street and Louisiana street, Chicago street, then we go over to Williams street, then Pine street, then Clinton street—Oh, I can't say all—about twenty miles, I think, I worked in paving.

Q. 6. In working in the paving of those streets which you have mentioned, which surface of the stone, if either, did you make the smoothest, the ends or the sides?

A. The end, steady.

Q. 7. Who told you to?

A. My boss, Mr. Holloway, himself, the contractor.

Q. 8. Why were the ends made the smoothest?

A. You have to get them close; if you don't get them close together, if a wagon goes over them then it makes holes right away.

Q. 9. Which did you leave the roughest, the sides or the ends?

A. The sides.

Q. 10. Which joint was the widest joint, the joint across the street, or the joint parallel with the street?

A. Across the street.

Q. 11. Why was that joint left the widest?

A. If the stone was not so tight the horses got a little hold in them.

Q. 12. Have you also dressed stones during this period?

A. Yes, sir.

Q. 13. State which you dressed the most, the sides or the ends.

A. The ends.

Q. 14. Did you ever lay any pavement with such blocks as you have described before John Holloway died?

256 A. Oh, yes; John Holloway, I guess, died about twenty years ago. I commenced 1849, in paving, and he died about 1853, I think—four or five years any how.

Q. 15. State whether or not the stones touched each other on the sides somewhere.

A. Yes, most of them; the stone would never be so smooth on the sides but that they would touch in one place.

NICHOLAS KURTZ,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed March 27, A. D. 1875, before me.

J. D. HUSBANDS,
Examiner.

CHRISTIAN ZIMMERMAN, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Christian Zimmerman; 27 years old; residence Buffalo; I am a paver.

Q. 2. What sort of stone have you been a paver of in Buffalo, as a general thing?

A. I have been paving most with Medina sandstone.

Q. 3. For how many years have you paved with Medina sandstone?

A. I have for 10 or 11 years.

Q. 4. In Buffalo?

A. Yes, sir.

Q. 5. What streets—name some of them?

A. I have paved Williams street, Niagara street, Peckam street, Swan street, Ensley street, and I have paved on Main street here.

257 Q. 6. In regard to the blocks which you have paved in the streets you have mentioned, what has been your practice in trimming?

A. We always have trimmed the stones square on the ends as much as we could, as far as they could be dressed on the ends; and the side of the stone has never been dressed so much, because we don't practice dressing them so much, because they generally split in seams.

Q. 7. State which you have left the roughest, the sides or the ends?

A. The sides.

Q. 8. Where was the closest joints formed, on the end or sides?

A. On the ends.

Q. 9. Why was the closest joint formed on the ends?

A. The closer joint was formed on the ends to prevent the wheels from cutting ruts; that and breaking joints.

Q. 10. Where was the widest joint formed?

A. On the side of the stone that was crossways with the street would be the widest joint.

Q. 11. Why was the widest joint required crossways of the street?

A. To give the horses a hold, and then they would never set so they wouldn't leave no joint.

Q. 12. Who have been your foremen during this period?

A. Mr. Holloway and Mr. Love.

Q. 13. Have they directed you to prepare and lay these blocks in the manner you have stated?

A. Yes, sir.

CHRISTIAN ZIMMERMAN,
By J. D. HUSBANDS, *Examiner*.

Sworn, taken, and subscribed March 27, A. D. 1875, before me.
J. D. HUSBANDS, *Examiner*.

258 JOHN LOVE recalled for the defendant and examined by Mr. WITTER:

Q. 1. Referring to the pavement which you have superintended the laying of in Buffalo, composed of Medina stone, from 1855 to the present time, state whether or not the sides of the blocks touched each other across the wide transverse seam.

A. They do.

Q. 2. Do you mean that they touch each other along the whole face, or at different points at stated points?

A. Sometimes; it isn't often the case that they touch their whole surface; usually they touch at different points, owing to the roughness.

JOHN LOVE,
By J. D. HUSBANDS, *Examiner*.

Sworn, taken, and subscribed March 27, A. D. 1875, before me.
J. D. HUSBANDS, *Examiner*.

CHARLES H. RATHBUN, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Charles H. Rathbun; forty-six years old; live in Buffalo; I am dealing in stone-quarrying and contracting generally.

259 Q. 2. Have you ever contracted for the laying of Medina stone pavement in the city of Buffalo?

A. I have.

Q. 3. State through how many years you have been contractor and foreman in that business.

A. I never contracted to pave but one street in Buffalo; that was six or eight years ago.

Q. 4. Have you ever been contractor for this object in Rochester?

A. Our firm has.

Q. 5. Who are the members of your firm?

A. William W. Whitmore, of Lockport; Gilbert Brady, of Rochester, and myself.

Q. 6. Are you acquainted with the characteristics of the Medina stone pavement as laid in Rochester and Buffalo?

A. I am.

Q. 7. For how many years have you been acquainted therewith?

A. Since 1844.

Q. 8. Has it been your practice, and that of your partners, to lay stone pavement from printed specifications?

A. I think the street that I paved here was not from printed specifications; how it is in Rochester I don't know. I would state here that the bulk of our business is quarrying and selling stone; not so much of laying it down.

Q. 9. I will now ask you the characteristics of the blocks of Medina pavement, and the manner of laying it during the time from the year, say, 1844 to the present?

A. The stones have been squared up about eight inches deep, from two to four inches in thickness, and from four to ten inches in length, in the shape of a parallelopiped, opposite sides being as near parallel as rough hammer-dress would make them.

260 Q. 10. State which surface has been made the smoothest; the sides or the ends.

A. The ends have always made the closest joints.

Q. 11. Which has been made the roughest, the sides or the ends?

A. The sides, generally, the roughest.

Q. 12. Which way did the widest joint run; that is, the joint on the side of the stone?

A. Transversely with the street.

Q. 13. Why has a close joint been made at the ends?

A. To prevent rutting.

Q. 14. Why was the open joint made at the sides?

A. For the purpose of draft—allowing draft animals to get a foothold.

Q. 15. State whether the stones touch each other on the sides; and if so, at what point?

A. They did touch in places.

Q. 16*a*. Have you read the letters patent upon which this suit is brought?

A. I have read the printed specifications shown here.

Q. 16*b*. Following the description and claim of that patent, what sort of a pavement would you lay or cause to be laid?

(Mr. Field objected, as calling for an opinion; irrelevant and incompetent; he is not an expert in the construction of written instruments, and there is no foundation laid to show that he is an expert in the laying of pavement in accordance with written or printed instructions.

Received, subject to objection.)

A. I should lay substantially such pavement as have been laid in this city for the last twenty-five years.

261 Q. 17. You said a little while ago that the stones varied from two to four inches in the thickness. So you mean that any given stone varies from two to four inches, or that different stones varied?

A. The different stones vary.

Q. 18. And you made the same answer in regard to the length?

A. Yes, sir.

CHARLES H. RATHBUN,
By J. D. HUSBANDS, *Examiner*.

Sworn, taken, and subscribed, March 27, A. D. 1875, before me.
J. D. HUSBANDS, *Examiner*.

ALBERT KROUSE, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth and nothing but the truth in the matter of controversy herein, and being examined by W. C. WITTER, counsel for the defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Albert Krouse; thirty-four years old; I live in Buffalo I am a civil engineer.

Q. 2. Are you in the employ of the city engineer of the city of Buffalo?

A. Yes, sir.

Q. 3. How long have you been in that office?

A. Seven years, sir.

Q. 4. Have your duties in that office caused you to become acquainted with the character of the pavement in Buffalo laid with the Medina stone?

A. I had to superintend the paving of the streets—some of them; I am one of the engineers, and the pavements are divided among the engineers.

262 Q. 5. For how many years have you been acquainted with the characteristics of that pavement?

A. I got acquainted with it as soon as I came to the office; I didn't have the superintendence right away; but I got acquainted with the pavement then.

Q. 6. Mention the names of some of the streets which are laid with that pavement.

A. There has been laid with that pavement Swan street, Sycamore street, Elk street, Oak street, Pennsylvania street, Wadsworth street, Prospect avenue, Niagara street, Delaware avenue, and a good many others.

Q. 7. What is the shape of the blocks that have been used in the pavement of those streets?

A. The blocks are trimmed to a parallelopipedon; that is, with the opposite sides parallel and equal; and then with the sides varying from two to four inches in width, and from six to ten inches in length.

Q. 8. And what is the depth?

A. Eight inches; we used to pave some less, some six inches, but that is not the general rule now.

Q. 9. Which surface of these blocks was made the roughest, the sides or the ends?

A. The sides.

Q. 10. Why were the ends made smoother?

A. The ends are made smoother so one stone would bear on the other one, and wouldn't cause a hole very easily, and the stone wouldn't be pressed down single; it would rest by friction on the stone adjoining.

Q. 11. Where was the closest joint made, on the end of the blocks or on the side of the blocks?

A. At the ends.

Q. 12. State whether the sides of the blocks touched each other at some points.

A. They touched each other at the most projecting points.

263 Q. 13. In which direction did the wide joint at the side run?

A. Across the street.

Q. 14. Have you read a copy of the letters patent upon which this suit is brought?

A. Yes, sir.

Q. 15. Following the description and claim of that patent, what sort of a pavement would you lay or cause to be laid?

(Mr. Field objected, as calling for an opinion, and is not an expert; irrelevant and incompetent.

Received subject to objection.)

A. Substantially the same pavement as we are laying in Buffalo.

Q. 16. And such as has been laid during the period you have been acquainted with it?

A. Yes, sir.

Q. 17. Did you ever have any pavement taken up for any reason; if so, for what reason?

A. I had some stones rejected because they didn't join on the ends.

Q. 18. When was that?

A. It was when we paved Sycamore street; three or four years ago.

ALBERT KROUSE,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed, March 27th, A. D. 1875, before me.

J. D. HUSBANDS,
Examiner.

264 GEORGE B. ALLEN, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. George B. Allen; I am forty-six next September; residence, Buffalo; I am a contractor.

Q. 2. What work have you done, or have seen the doing of, as contractor?

A. Paving. I had a contract for building the insane asylum at Ovid—the Willard asylum; and I have done some culvert work on the canal at Lockport, winters.

Q. 3. You include paving in your answer; when has the paving which you refer to been done?

A. I have paved in Buffalo, New Orleans, and Rochester and Utica.

Q. 4. Confine yourself now to the pavements of Rochester and Buffalo, and state during what years you have done work in those two cities, either as contractor or foreman.

A. I think the first I done in Buffalo was in 1846, and, with the exception of one winter and spring, up to 1856. I say one winter and spring; well, one month in Rochester in 1855, and then up to the spring of 1856 I was here, and I was in Rochester from 1856 until 1866.

Q. 5. Did you superintend the paving of Frank street, in Rochester?

A. I did, sir.

Q. 6. When was that?

265 A. I think it was on the 5th day of July, 1855, that we left here, and was there about a month; that is my impression; I think it was the day after the fourth that we started from here.

Q. 7. When did John Holloway die?

A. He died in the December of 1853, about Christmas; I can't distinctly recollect whether it was a day or two before or a day or two after.

Q. 8. Confining yourself to the pavement laid in Rochester and Buffalo since 1855, state of what kind of stone they have been laid.

A. Rochester has used a good many cobble stones.

Q. 9. From what quarry?

A. The quarry has been the Medina stone—what they call the Medina stone quarry in Lockport, and Medina, and Albion; but they call it the Medina stone.

Q. 10. Have you been acquainted witn the Medina stone pavement from 1855 to the present time?

A. Yes, sir.

Q. 11. State the character of the blocks that have been laid from that time to the present in Buffalo and Rochester?

A. They were—there might have been a little variation as to the depth of some of them; but the majority of them were eight inches in depth, from two to four inches in width, and about eight inches in length, and probably ten; to from six to ten; eight is what they calculated to get them out.

Q. 12. State whether the opposite surfaces were substantially near a parallel.

A. Well, substantially they were.

Q. 13. Which surface was the roughest, the sides or the ends?

A. The sides would be the roughest; the end joints were taken the most pains with, for the purpose of getting the end joints tighter and closer.

Q. 14. Why were the end joints desired to be made tighter and closer?

266 A. To obviate a stone from canting, and also from cutting a rut in; make the work better.

Q. 15. Did these stones touch each other on the sides at any point; and, if so, where?

A. That would depend a good deal where they touched, where there was the largest projection on the sides; but the sides were never dressed as closely as the face of the stone—the top surface, or the surface the men would select as the top surface.

Q. 16. In which direction did the wide joints at the sides run?

A. Crossways with the street; the stone is presumed to run at right angles with the curb.

Q. 17. Have you been in the habit of doing work from written or printed specifications?

A. They are printed and filled in with writing; yes, sir.

Q. 18. Have you read a copy of the letters patent upon which this suit is brought?

A. Yes, sir; I read one here to-day, and I read one the other day.

Q. 19. Following the description and claim of that patent, what sort of a pavement would you lay?

(Mr. Field objected, as calling for an opinion; irrelevant, incompetent; and he is not an expert in the construction of written instruments; and there is no evidence to show that he is an expert in the laying of pavement in accordance with written or printed instructions.

Received subject to objection.)

A. Substantially as we are laying them now, and have been since 1849.

GEORGE B. ALLEN,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed, March 27, A. D. 1875, before me.
J. D. HUSBANDS, *Examiner.*

267 George Bomberge, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by W. C. Witter, counsel for defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. George Bomberge; I am forty-three years old; I live in Buffalo; I am engineer.

Q. 2. Have you ever held any office under the city government of Buffalo?

A. I did.

Q. 3. What office, and when about?

A. City surveyor.

Q. 4. For how long?

A. For two years.

Q. 5. When?

A. In 1868 and 1869.

Q. 6. Have you been deputy surveyor also?

A. I have.

Q. 7. For how many years?

A. From 1862 to 1868; then again in 1872 up to the present time.

Q. 8. Have your duties as surveyor and deputy surveyor of the city of Buffalo required you to be acquainted with the characteristics of Medina pavement which is laid here, and the manner of its laying?

A. Yes, sir.

Q. 9. For how many years have you been so acquainted with that pavement?

A. Since 1862.

Q. 10. Upon what streets have you been acquainted with it; mention some of them?

268 A. Franklin street, Williams street, Batavia street, Tenth street, Jersey street, Pennsylvania street, Maryland street, Ohio street, Ellicot street, Seneca street, Swan street, Main street, Oak street.

Q. 11. What is the shape of the blocks which have been laid in these streets?

A. They were parallelopipeds.

Q. 12. Which has been the roughest, the sides of the blocks or the ends?

A. The sides were the roughest.

Q. 13. Which joint has been the closest, the side joint or the end joint?

A. The end joint.

Q. 14. Why is the end joint the closest?

A. The face of the stone is worked smooth.

Q. 15. By the face do you mean the end?

A. The end face; yes, the ends.

Q. 16. Why was it desirable to have a close joint at the end?

(Mr. Field objected as calling for an opinion.
Received subject to objection.)

A. So as to make the stones stand firmer crossways the street.

Q. 17. Which way did the wide joints at the sides of the stones run?

A. They run on the long side of the stone.

Q. 18. Which way relatively to the street?

A. They run crosswise to the street.

Q. 19. Did the stones touch each other on the sides at some point or other?

A. They may touch in a few places; there are projections on it.

Q. 20. Have you read a copy of the letters patent upon which this suit is brought?

A. Yes, sir.

269 Q. 21. Following the description and claim of that patent, what sort of pavement would you lay or cause to be laid?

(Mr. Field objected as calling for an opinion; irrelevant, incompetent; he is not an expert in the construction of written instruments, and not an expert in laying pavement in accordance with written or printed directions.

Received subject to objection.)

A. The same as laid here since 1862.

GEORGE BOMBERGE,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed March 27, A. D. 1875, before me.

J. D. HUSBANDS,
Examiner.

PATRICK SMITH, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Patrick Smith; I will be 67 first of April next; residence, Buffalo; my occupation is a gunsmith.

Q. 2. Have you ever held any office under the city government?

A. Yes, sir; I was alderman five years and street commissioner two years.

Q. 3. Have you ever been chairman of the street committee?

270 A. I can't answer that question; I haven't looked at my memorandums to know; I was on the street committee at least, but I can't answer the question without going back to some memorandum.

Q. 4. Was it before or after you were street commissioner?

A. I was alderman before.

Q. 5. Are you acquainted with the character of the pavement of Buffalo which has been laid with Medina stone?

A. I think I am somewhat; I had charge of it two years; the street commissioner in those days had charge of the work.

Q. 6. For how long have you been acquainted with the characteristics of this pavement?

A. Oh, ever since I was—I was street commissioner, according to a little memorandum I found in my office, from 1856 to 1857; the first day of January, 1856, I was sworn into office.

Q. 7. And you have been acquainted with the characteristics of this pavement ever since?

A. I had charge of the pavement during those two years; it was all done under my directions—1856 and 1857.

Q. 8. Referring to the pavement then done under your directions, state whether the sides of the blocks which were used were rougher than the ends.

A. The sides, when I gave directions in reference to them; generally the pavement was done and specifications got up in the office when I gave special directions; I never was particular about the sides; I deemed it real important to leave an opening so it might be filled up with gravel.

Q. 9*a*. What directions did you give about the ends?

A. The ends I always directed to be dressed as nice as possible under the circumstances, so as to form a close joint.

Q. 9*b*. Which joint was widest, the joint on the side of the stone or the joint on the end?

271 A. I required the joint on the end to be made as perfect as you could make it; the side joints I wasn't particular about.

Q. 10. Have you read a copy of the letters patent upon which this suit is brought?

A. Yes, sir.

Q. 11. Following the description and specification of that patent, what sort of a pavement would you lay or cause to be laid?

(Mr. Field objected, as calling for an opinion; irrelevant, incompetent; he is not an expert in the construction of written instruments, and not an expert in the laying of pavement in accordance with written or printed instructions.

Received subject to objection.)

A. I would say, from the hasty examination of the paper that I read, that the pavement that I caused to be laid was substantially that kind of a pavement—from the hasty examination I gave it.

PATRICK SMITH,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed March 27th, A. D. 1875.

J. D. HUSBANDS,
Examiner.

ALEXANDER BRUSH, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

272 A. Alexander Brush; fifty-one years old; I live at 82 North Swan street, Buffalo; I am a brick-manufacturer.

Q. 2. Have you ever held any office under the city government of Buffalo?

A. I have, sir.

Q. 3. What office have you held under the city government?

A. I held the office of alderman for six years; street commissioner for two years; mayor for four years.

Q. 4. State whether your duties have caused you to become acquainted with the character of the pavement laid in Buffalo of Medina stone.

A. It has, sir. During my term of office as alderman and street commissioner my duties called me to look after the streets and paving more or less during the whole term.

Q. 5. For how many years have you been acquainted with that pavement and its characteristics?

A. I have been acquainted with the pavement for a number of years, but more particularly for the last twelve years, since I have been connected with the city government, and as a member of the street committee, and chairman of that a couple of years. My duties are to look after the paving, and more particularly so during my term of street commissioner. The paving at that time was done under the direction of the street commissioner.

Q. 6. During the whole twelve years which you have mentioned what has been about the size of the stones which composed this pavement?

A. Our paving here has been done under contract, under specifications; and the specification is, the blocks of stone to be broken; usually is not less than two or over four inches in thickness and eight inches deep.

Q. 7. And about what length?

273 A. I don't know in fact, as the length was stated usually. They would average about the same length as they would depth, from five to eight inches—from five to ten inches—perhaps from six to ten inches.

Q. 8. Which surface of the stone was the roughest, the side or the ends?

A. The sides.

Q. 9. Where did you require the cl'se joint to be made?

A. At the end.

Q. 10. Why did you require that?

A. It made stronger work; to have the bearings on the ends smooth and uniform.

Q. 11. In what direction did the wider joint run?

A. It run across the street.

Q. 12. What streets can you mention as having been originally paved with the stones such as you have described?

A. Well, nearly all of our streets. Under my administration, Seneca street was paved, Swan street and some portion of Main street, Ensley street, and several other works of less magnitude than those.

Q. 13. Have you read a copy of the letters patent upon which this suit is brought?

A. I have, sir.

Q. 14. Following the description and claim of that patent, what sort of a pavement would you lay?

(Mr. Field objected, as calling for an opinion; irrelevant and incompetent; he is not an expert in the construction of written instruments, and is not shown to be an expert in the laying of pavement in accordance with written or printed instructions.

Received subject to objection.)

A. I should lay, substantially, the same kind of pavement as we are putting down here, as a general thing, in my opinion.

274 Q. 15. And do you mean substantially such as you superintended when you were commissioner?

A. Yes, sir.

Q. 16. Who is the present mayor of your city?

A. L. P. Daton.

Q. 17. Is he absent from the city?

A. He is said to be; I think he is.

ALEXANDER BRUSH,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed, March 27th, A. D. 1875, before me,
J. D. HUSBANDS,
Examiner.

JOHN A. DITTO, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by W. C. WITTER, counsel for the defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. John A. Ditto. I am forty-six years old. I live in Buffalo, and I am a civil engineer.

Q. 2. Have you ever had any office under the city government?

A. Yes, sir.

Q. 3. State what.

A. I was city surveyor.

Q. 4. When?

A. It is so long ago I forget almost; I think it was in 1866 and 1867, and in 1870, I think; and there was a change in the charter, and change in the officers, and I don't recollect what year that was, but I think it was 1871.

275 Q. 5. Have your duties required you to become acquainted with the characteristics of the pavement laid in Buffalo of Medina stone?

A. Yes, sir.

Q. 6. For how many years have you been acquainted with that pavement?

A. Well, since 1854.

Q. 7. Referring to that pavement, which joints are the wider, the joints running across the street or the joints running parallel with the street?

A. The joints running lengthways with the street, what we call the end joints of the street stone.

Q. Will you please reconsider the last question, and see if you wish to make any different answer?

A. The end joints are the closest.

Q. 9. You said, in your answer, that the joints running lengthways with the street, that is, at the ends of the stone, were the widest; did you mean that?

A. I beg your pardon, I did't say that; what meant was that the ends of the stone were the closest joints instead of the broadside of the stone, the lengthways of the stone.

Q. 15. Of what material have the stones been made?

A. What is known as Medina sandstone.

Q. 16. Why were the joints at the ends of the stone made the closest?

A. Well, because at the point where the end of the stone is there is—I don't know how to put the answer into shape—but secures many bearing points, so that the end of the stones should not tip down, in the first place, and commence and start to make a hole in the street there.

JOHN A. DITTO,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed, March 27, A. D. 1875, before me,
J. D. HUSBANDS,
Examiner.

276 ISAAC HOLLOWAY, a witness of lawful age, produced on the part of the defendant, having been by me first duly cautioned, examined, and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by W. C. WITTER, counsel for defendant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Isaac Holloway; Buffalo; fifty-three years old; my occupation is contractor.

Q. 2. What relation are you, if any, to John Holloway, who has been spoken of in this testimony?

A. Brother, sir.

Q. 3. When did he die?

A. In December, 1853.

Q. 4. What sort of work has your business as contractor called you to perform?

A. Ever since I have been in Buffalo I have been in the paving business; principally making streets.

Q. 5. For how many years have you, as contractor, been occupied in the pavement of the streets of Buffalo from the first?

A. Twenty-nine years.

Q. 6. Mention some of the parties who have acted as foreman for you.

A. Well, since my brother died Mr. George B. Allen has acted as foreman; that is, to have charge of the paving; I suppose that is what you mean; and Mr. John Love.

Q. 7. What sort of stone, as a general thing, has been used in the pavement you speak of?

A. Medina sandstone.

Q. 8. Have you ever worked as a paver yourself?

A. Yes, sir.

277 Q. 9. Who instructed the workmen of Buffalo in the manner of paving the Medina pavement?

A. The kind they are now laying?

Q. 10. Yes, sir.

A. My brother and myself got up the first specification, what we called this square paving, and we gave instructions to have it laid according to specifications.

Q. 11. State whether Allen and Love, whom you have mentioned, have been accustomed to lay pavements in accordance with written or printed specifications.

A. They principally received their instructions from me, but they have had written specifications to go by; in other words, they have had copies of the contract with them.

Q. 12. State whether you regarded them as men capable of laying pavement in accordance with written or printed specifications.

(Mr. Field objected as calling for an opinion, irrelevánt and incompetent, and not the mode of proving it.

Received subject to objection.)

A. I considered them both fully competent, sir, to work under instructions, or do that kind of business without even instructions.

Q. 13. Do you know Gilbert Brady and Mr. McConnell, of Rochester, Superintendent Butler, Colonel Grantsynn, Congressman Seelye?

A. I know Mr. Seelye, and I know Mr. McConnell and Mr. Brady; the other gentlemen I can't say I am personally acquainted with.

278 Q. 14. State whether, in your opinion, the gentlemen whom you have said you know are capable of laying pavement in accordance with written or printed descriptions.

(Mr. Field objected, as calling for an opinion, irrelevant, and incompetent.

Received subject to objection.)

A. I should say they were competent.

Q. 15. What was the shape of the stone which you have laid, or caused to be laid, through your foremen or otherwise, in the city of Buffalo, from Medina stone?

A. Since 1849 the stone was got out from two to four inches thick, as it may be, and from four to eight inches long, seven or eight inches deep and square, as near as we could work them out, and when laid so as to present like surfaces at the top and bottom of the stone.

Q. 16. State also whether they presented a like surface on the two sides and on the two ends.

A. We have uniformly dressed the stone so that they would go closer together on the ends; closer together on the ends than they did on the sides.

Q. 17. State whether the stones were of a uniform thickness (I refer to individual stones) from top to bottom, and from end to end.

A. As near as we could break them that way; we calculated to get them out that way.

Q. 18. And of a uniform length from top to bottom?

A. Yes, sir.

Q. 19. State which was dressed the roughest, the sides of the stone or the ends.

A. The ends of the stone, sir. I don't know whether I understand the question.

Q. 20. State which was dressed the roughest, the sides of the stones or the ends of the stones.

A. The sides of the stone was dressed the roughest. Do you want my reason why?

Q. 21. Give the reason why, if you please.

279 A. In order to make a good pavement we have to get the ends of the stones close together, as they run lengthwise of the street—that which the travel comes on—and in order to make good pavement we have to have the ends of the stone close together.

Q. 22. When you answered a moment ago that the ends of the stone were dressed the roughest, did you understand the question?

A. No, sir; I didn't. I misunderstood that, or I answered incorrectly.

Q. 23. Which joint was the widest, the jointon the side of the stone or the joint on the end?

A. The joint on the side of the stone was, perhaps, as wide again as the end of the stones, as a general thing.

Q. 24. What was the object of having a wider joint at the sides than on the ends?

A. Well, for convenience for horses to travel.

Q. 25. State whether or not that pavement has been practically successful, from the year 1849 to the present time, in affording a good foothold for the horses, by reason of the transverse open joints, and in preventing ruts by reason of close end joints.

A. We think it is, for one very important reason; that is, they haven't changed the specifications from that time to this; we have some pavement that has been down very near that length of time, that hasn't had any repairing, and received the travel from that time to this, and are in very good shape now.

Q. 26. How many miles of pavement, from 1849 to the present time, do you think has been laid in the city of Buffalo, embracing the characteristics you have described as appertaining to this Medina stone pavement?

A. You want what has been laid.

Q. 27. What has been laid.

A. Since 1849 there hasn't been far from fifty—I should say fifty miles.

280 Q. 28. What was the first street that was laid with pavement in all particulars like that you have described in the city of Buffalo?

A. Main street, from South Division street up to Genesee street.

Q. 29. When was that?

A. In 1849.

Q. 30. Mention the dates of the years during which pavement of a like description has been laid in the city of Buffalo since 1849?

A. Well, I can't give you the dates, for there hasn't been a year from that time but what there has been more or less laid; I have laid from one to three miles per year myself, as contractor.

Q. 31. State whether in laying this pavement you have ever acted as paver yourself.

A. Yes, sir; I laid the stones with my own hands.

Q. 32. State whether you have acted as director on the street when the pavement was being laid.

A. I have had general charge on the street and given general directions since 1853; previous to that time my brother John had direct charge of the street work.

Q. 33. Will you mention the names of some of the streets of Buffalo which have been paved with the pavement you have described?

A. How many do you want?

Q. 34. As many as you have a mind to.

A. Main, Niagara, Ohio, Perry, Exchange, Scott, Seneca, Swan, Michigan, Elk, Eagle, Clinton, Williams, Sycamore, Washington, Franklyn, Delaware, Sixth, Seventh, Ninth, Pennsylvania, Jersey, York, North, Connecticut, Tonawanda, Amherst; I would have to go to the office to think of any more, for I can't think of any more streets in the city.

281 Q. 35. State what character Mr. Klein, Mr. Frie, and Mr. Rieman bear as pavers; how they rank in comparison with other pavers in the city of Buffalo and Rochester.

(Mr. Field objected, as calling for an opinion; he is not an expert; irrelevant, incompetent, and is not the mode of proving it.

Received subject to objection.)

A. I consider them A No. 1 mechanics.

Q. 36. Have you read a copy of the letters patent upon which this suit is brought, and do you understand the same?

A. I have.

By the examiner:

Q. Did you understand it?

A. Yes, sir.

By Mr. Witter:

Q. 37. Following the description and claim of that patent, what sort of a pavement would you lay, or cause to be laid?

(Mr. Field objected, as calling for an opinion; irrelevant and incompetent; he isn't an expert in the construction of written instruments, and there is no foundation laid to show he is an expert in the laying of pavement in accordance with written or printed instructions.

Received subject to objection.)

A. I think it describes our pavement very accurately.

ISAAC HOLLOWAY,
By J. D. HUSBANDS,
Examiner.

Sworn, taken, and subscribed March 27th, A. D. 1875, before me.

J. D. HUSBANDS,
Examiner.

282 NORTHERN DISTRICT OF NEW YORK,
City of Rochester, ss:

I, Joseph D. Husbands, the examiner named in and appointed by order of the circuit court of the United States for the eastern district of New York, on the 10th of July, A. D. 1874 (a copy of which is hereunto annexed), do hereby certify that on the 25th, 26th, and 27th days of March, A. D. 1875, at Rochester and Buffalo, in said northern district of New York, I was duly attended by the parties to a suit in equity pending in said circuit court for the eastern district of New York, in which Charles Guidet is complainant and the city of Brooklyn is the defendant; the said complainant appearing with William Hildreth Field, esq., his counsel, and the said defendant by William C. Witter, esq., its counsel, and also by witnesses produced by the said defendant; and such witnesses, being of sound mind and lawful age, were, and each was, by me carefully cautioned, and sworn to testify to the truth, the whole truth, and nothing but the truth in said suit; and the said depositions were by me reduced to writing, in the presence of the witnesses, respectively, and from their statements made before me, severally and respectively, by taking the same stenographically by William F. Duffield, esq., an expert stenographer, employed therefor by the consent and stipulation of the said parties, as more fully appears by their stipulation at the commencement of said proceedings; and after carefully reading their said testimony to each and every of such witnesses, from the stenographer's short-hand taking of such depositions, respectively, the same were severally subscribed by them thereto in my presence, and after being written out under my supervision, I subscribed them with the names of the said witnesses pursuant to the said stipulation, and the express consent of each and every
283 of the said witnesses; which depositions, as so written out and subscribed by me, are hereto annexed and prefixed. The deposition of Mark Normington is subscribed by him in person.

In witness whereof I hereunto set my hand, at Rochester aforesaid, this fifth (5th) day of April, A. D. 1875.

J. D. HUSBANDS,
Examiner.

BROOKLYN, *March* 6, 1875—12 m.

Present, Mr. Field and Mr. Harding for complainant, and Mr. De Witt and Mr. Knaebel for defendant.

HENRY UTERHART recalled for defendant.

Q. 1. Since the last adjournment have you made any further examinations, measurements, and drawings of the pavements in the city of Brooklyn already referred to?

A. I have.

Q. 2. State what you have done in that regard.

A. I have, on the different portions which have been shown on the map in evidence (exhibit), cleaned off a portion of those streets, as therein mentioned, taking good care to have all the sand removed from the joints, both longitudinal and transversal; painted then the edges of the stones with a mixture of paint and dyeing stuff, which stuff had been thoroughly tested, so that it would not spread over the canvas, and then took a print on the canvas from the different joints, so as to give a fac-simile of those pavements on the streets:

(Counsel for defendant offers in evidence three large framed fac-similes of pavements, which are marked "Defendant's Exhibits Uterhart Nos. 1, 2, and 3, J. A. S., ex'r.")

Q. 3. Please to state from what streets you took the impression of pavement appearing on Exhibit No. 1.

284 A. North side of Myrtle avenue, 141 feet west of Tompkins avenue.

Q. 4. How much of the Myrtle avenue pavement have you examined?

A. Two portions in this way, and the whole generally.

Q. 4½. How did the piece of pavement indicated in Exhibit No. 1 compare in construction and appearance with the rest of the Myrtle avenue pavement?

A. The piece indicated on No. 1 was taken indifferently from the entire pavement. The entire pavement was covered with sand, having been recently laid, and we had to remove the sand to take the impression.

Q. 5. Does this show a fair average of the pavement?

A. It does.

Q. 6. Did you make any measurements of the joints appearing on the piece of pavement appearing on Exhibit No. 1?

A. No, sir.

Q. 7. From what street was the impression taken appearing on Exhibit No. 2?

A. Fifty feet east of curb line of Yates avenue, on Myrtle avenue, north side.

Q. 8. How did the piece of pavement from which you took the impression No. 2 compare in construction and appearance with that vicinity?

A. General average; this was more recently laid than the other; it was covered with sand and had never been traveled upon.

Q. 9. From what locality was the impression taken shown in Exhibit No. 3?

A. North side of Lafayette avenue, 25 feet east of Skillman street.

Q. 10. Have you made a general examination of the pavement laid on Lafayette avenue?

A. Yes, sir.

285 Q. 11. How did the piece of pavement from which you took the impression No. 3 compare in construction and appearance with the rest of the pavement on Lafayette avenue?

A. Just the same. This street has been traveled on, and there was no sand on it, so I could make a fair judgment of the whole street.

Q. 12. Describe more particularly the process by which you took these three impressions, stating who assisted you, and how accurately the impressions show the edges and proximity of the stones or blocks.

A. My assistant was Mr. Samuel Taunton. The process was as following: After the street had been thoroughly swept and cleaned by an assistant and myself, we painted carefully the four edges of the stone blocks which were to be covered by this canvas. As soon as this was done we had two laborers to hold down the framework, the canvas having already been stretched on the framework as it now appears. Then my assistant and myself rubbed each corner of the stone with our fingers to get the imprint of the joint on the canvas. The exhibits now shown are exact fac-similes of that portion of the streets named.

Q. 13. Do the impressions show accurately the proximity of the several edges of the stones as they appear on the surface of the street?

A. They do.

H. UTERHART.

Subscribed and sworn to before me this 6th day of March, 1875.

JOHN A. SHIELDS,
Examiner.

Samuel D. L. Taunton, a witness called on behalf of defendant, being sworn, testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Samuel D. L. Taunton; age, 27; residence, 1876 Atlantic avenue; and occupation, surveyor and civil engineer.

286 Q. 2. Have you examined the pavement composed of oblong granite blocks laid in the city of Brooklyn? If you state yea, state on what streets and to what extent.

A. I have; on Myrtle avenue between Washington street and the city line; on Lafayette avenue, the whole length of it; and portions of Atlantic avenue; on Henry street. Walking along I didn't notice the joints particularly.

Q. 3. From the examination thus made of these several pavements, state how, as a general rule, the longitudinal joints between the blocks compare in width with the transverse joints.

A. They are generally equal in width. Taking as an average they are equal.

Q. 4. Did you take any part in making the measurements indicated on the drawings A, B, C, and D, produced in the examination of Mr. Uterhart at the last meeting? If yea, state what you did.

A. Yes; I assisted Mr. Uterhart in taking the actual measurements shown on the drawings; the actual figures appear on the drawing.

Q. 5. What do the figures on the drawings in question exhibit?

A. The actual measurements made of the portions the streets they represent.

Q. 6. How did the several portions of pavement represented by those drawings compare in construction and appearance with the rest of the pavement in each case?

A. They had similar appearance.

Q. 7. State the process pursued by yourself and Mr. Uterhart in making the measurements represented on the drawings A, B, C, etc.

A. I used an ordinary surveying pin to clean out the sand between the joints, first having brushed the surface clear; then measured from edge to edge of adjacent stones, and Mr. Uterhart made notes.

287 Q. 8. Did you take any means to ascertain whether the blocks composing the pavement actually touched together? If yea, state what you did in that regard?

A. Yes; at each point measured I pushed the surveying pin down between the blocks and found, except in one or two points where the pin would not go down, that there was perfect freedom from the top of the block to the base.

Q. 9. What, if anything, was between the blocks to keep them tight?

A. When the block was not dressed or broken square a slight projection on the block would interfere with the passage of the pin, and this always in the lower portion of the block, the top being free. There was sand in between them.

Q. 10. Did you hear Mr. Uterhart's testimony to-day regarding the preparation of to-day's Exhibits 1, 2, and 3?

A. I have.

Q. 11. What do you know as to the truth of Mr. Uterhart's testimony of to-day as to the Exhibits 1, 2, and 3?

A. It is true. I corroborate it. I did the painting and greater portion of the rubbing.

Q. 12. How do the several portions of pavement from which the impressions 1, 2, and 3 were taken compare in construction and appearance with the rest of the pavement in each case?

A. They are similar in appearance.

Q. 13. State how accurately the width of the joints, as indicated in the several Exhibits 1, 2, and 3, corresponds with the width of the joints of the actual pavement represented.

A. They agree exactly.

Q. 14. Are those impressions fac-similes of the actual pavements represented, so far as regards the superficial appearance of the joints, in respect to the dimensions?

A. They are.

SAM. D. L. TAUNTON.

Subscribed and sworn to before me this 6th day of March, 1875.

JOHN A. SHIELDS,
Examiner.

Defendant's Brooklyn testimony closed.

288 Circuit court of the United States for the eastern district of New York. In equity.

CHARLES GUIDET
against
THE CITY OF BROOKLYN.

Proofs for final hearing taken on the part of the defendant in the above cause, under and pursuant to the 67th rule in equity, as amended, before Joseph Gutman, jr., examiner:

NEW YORK, *May* 29, 1875.

Present, Mr. Witter, counsel for defendant, and Mr. Field, counsel for complainant.

GEORGE W. BEARDSLEE, a witness of lawful age, produced on the part of the defendant, and being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by Mr. WITTER, he says:

Q. 1. What is your name, age, residence, and occupation?

A. My name is George W. Beardslee; I am 63 years old; I reside at Brooklyn, N. Y.; I am an electrical and mechanical engineer.

Adjourned until Saturday, June 5, 1875, at 11 o'clock a. m., at the request of complainant's counsel.

289 NEW YORK, *June* 5, 1875—11 a. m.

Met pursuant to adjournment.

Present, Mr. Witter, counsel for defendant, and Mr. Field, counsel for complainant.

Adjourned until Saturday, June 19, 1875, at 11.30 a. m., at the request of complainant's counsel.

NEW YORK, *June* 19, 1875—11.30 a. m.

Met pursuant to adjournment. Present, counsel as before.

Adjourned until Tuesday, June 22, 1875, at 11 o'clock a. m.

NEW YORK, *June* 22, 1875—11 a. m.

Met pursuant to adjournment.

Present, counsel as before, and George Harding, counsel for complainant.

GEORGE W. BEARDSLEE, a witness of lawful age, produced on the part of the defendant, and being first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by Mr. WITTER for the defendant, he says:

Q. 1. What is your name, age, residence, and occupation?

A. My name is George W. Beardslee; I am 63 years of age; I reside in Brooklyn, New York; I am a mechanical and electrical engineer.

Q. 2. Did you ever have anything to do with working in stone? And, if yea, state when first and how you became acquainted therewith.

A. My father owned a stone quarry when I was between nine
290 and ten, which I worked in as a boy, and continued thus in that
quarry until I was 14 or 16 years of age.

Q. 3. Where was this quarry located?

A. At Rochester.

Q. 4. State what classes of work you then became acquainted with, and describe the character of the material.

A. My father's quarry was in a limestone formation, consisting of strata of variable thickness, from two to ten or twelve inches. These stones were quarried in courses. They had a very roughened surface, but were susceptible of being broken into squares or blocks, and were used for building purposes, and laid in courses, and were used for flagging, for curbstone, and subsequently for paving. The flat surfaces of this stone presented a knobby, uneven surface, and each course or strata retained its uniform thickness throughout the whole quarry. When broken transversely through what we called the grain of the stone the fracture would be comparatively smooth as compared with the flat side of the stone.

Q. 5. After the period you have mentioned what next did you become acquainted with in the way of working in stone, and when did this acquaintance commence, and for what period continue?

A. From the year 1830 to 1850 I was engaged in the business of building and architecture at various points in Western New York, my principal place of business being at Rochester. During that period I designed and drew the specifications of about 1,000 structures of various kinds, private and public; had built nearly 300 buildings during that period, many of them requiring stone from various quarries—from Medina, from Lockport, Syracuse, and Auburn, and Rochester. I personally visited the quarries; had attended to the formation of the
291 different kinds of stone work in those buildings for which I drew
the plans and specifications. During this period I examined and saw put down a pavement or pavements made from the limestone of the Rochester quarries. The shape and form of block thus used were like the pavements in Brooklyn and New York in various streets (the

shape and form of stone I mean to be understood), the flat sides of which were rough, while the top, bottom, and ends were comparatively smooth. This pavement was lain in courses across the street, their flat roughened sides together, breaking joints in their successive courses, the blocks varying in length from eight to eighteen inches, and in depth from eight to twelve inches, and in thickness from two to four inches. I recollect distinctly the laying one of these pavements thus described in the city of Rochester, in a street known at that time as Exchange street, running from Buffalo over the canal. Upon the line of this street at that time a considerable amount of property was owned by a gentleman by the name of Silas O. Smith. The pavement was made by him. I was upon the work while the pavement was being laid, and conversed with Mr. Smith in regard to it.

(Mr. Harding objects here to the witness detailing conversations.)

The pavement thus being laid was a novelty to me, I never having seen a pavement of that kind before; and, being novel, I asked Mr. Smith what advantages such a pavement would have over those that were generally made of cobble-stone. He stated that, owing to the roughness of the sides, the transverse joints across the street would be open, and afford a foothold for the horses on the ascending grade of this street, while the joints in line with the street would be closed, which would prevent the wheels from cutting into the pavement; that the pavement, from the roughness of the sides and the length of
292 bearing upon the soil, would obviate, under heavy traffic, the making of ruts and the breaking up of the pavement.

There were other streets or alleys in that city paved with the same kind of stone, and in the same manner, one of which streets or alleys ran out of this street, across the foot of what was called Child's Basin. This alley, I think, was named Basin alley. That pavement, in this alley, I found last summer portions of it remaining the same as when originally laid; it still shows the courses, the length, and thickness of the stone, which, upon measurement, I found were from 8 to 16 inches in length; the pavement presenting in its present appearance, with the exception of being rounded over, that of Broadway, New York; Fulton avenue, Atlantic, Myrtle, and Lafayette avenues, in Brooklyn, having the same characteristics as to transverse and longitudinal joints; the only dissimilarity that I could discover being that one being granite and the other lime; and the several courses of the Rochester pavement not presenting the same uniformity of thickness. Each course was of a uniform thickness across the street. I cannot give the exact date when this Exchange street and Basin alley was laid, but it was prior to the year 1840.

The alley which I refer to as Basin alley is the first alley running out of Exchange street, on the left-hand side as you go towards the canal from Buffalo street; it is on the east side of Exchange street, and is the only alley between the canal and Buffalo street; the only part of these two streets that I found this pavement remaining on last summer was the portion I so found on what I have called Basin alley.

During this examination I have spoken of last summer I went over numerous streets in the city of Rochester which I found paved in a similar manner and with like material, with the exception that
293 the stones were from the Lockport or Medina quarries, the date of which pavement I only know from examin'g the records of the city, and from what information I received from the engineer who had charge of the work. During this period, in the year 1849, I resided in Buffalo; that year I saw a portion of Main street in the city paved with

the same kind of material, from the Medina or Lockport quarries. I went over this pavement during last summer with Mr. Holloway, who paved the street in 1849; that pavement was composed of blocks of similar shape to those referred to in Broadway, New York, and the various avenues in Brooklyn; the sides of these blocks bore a stronger resemblance to the split granite blocks of the Brooklyn and New York pavement, they having been made by splitting up and working large masses like granite; the surfaces presented on the sides were rough, uneven; what we would call eaty—not like the lime which was quarried in strata, which was mostly with protuberances upon them—both, however, causing open transverse joints.

Q. 6. How were the surfaces on the ends?

A. As compared with the sides they were smooth.

Q. 7. What was the character of the end joints in the Exchange street, Basin alley, and Main street pavements, of which you have spoken, as to being open or close?

A. They were much closer than the transverse joints, when they were in contact.

Q. 8. Have you read the depositions of Mr. Eliot in this case?

A. I have.

Q. 9. He states therein that he had examined the pavement laid upon Atlantic avenue, Brooklyn, from the intersection of Henry street with said avenue to about the intersection of Bond street with said avenue; also that of Lafayette avenue from where it intersects Flatbush
294 avenue as far as Oxford street; and that of Myrtle avenue from the intersection therewith of Cumberland street to its junction with Fulton street. State whether you have examined the pavement at those particular localities, and how that compares with the pavement which you have described as having been laid in Exchange street, Basin alley, and Main street, spoken of.

A. I saw, during the paving of all those streets, the blocks, examined them while laying upon the work in the street, saw them put down at various times during the time they were being paved, and have frequently since then been over the streets and have examined the character of the pavement, and have been unable to discover any material difference between those pavements and those I have described heretofore referred to, they having the same characteristics in regard to joints, both transverse and longitudinal; similar shaped blocks, with roughened sides and comparraively smooth ends, and the only difference being that of the character of the material used, and not so great a uniformity in the thickness of the various courses used.

Q. 10. Do you mean that you saw the laying of some of this pavement at the particular points mentioned by Mr. Eliot in his deposition, or was it other parts of the same streets upon which the same kinds of pavement was laid of which you speak?

A. I was upon those streets during the time that this pavement was being, laid from their beginning to their termination, as often as once, twice, or three times a week, and have been as frequently upon those streets since they have been finished; I saw the pavement being laid upon all parts of the streets, and I, therefore, must have seen it upon the parts mentioned by Mr. Eliot.

Q. 11. You say that in the conversation between yourself and Mr. Smith, regarding the Exchange street or Basin alley pavement, the object of securing a foothold for the horses by the more open
295 transverse joints, and the prevention of ruts by the close end joint was mentioned; what have been your opportunities of know-

ing whether those two objects were accomplished by those Exchange street and Basin alley pavements, and other pavements like it in Rochester, and state what your conclusion therein is?

(Question objected to.)

A. Up to the making of this pavement by Mr. Smith there had been no pavements of stone put down in Rochester; the only pavement that I recollect was made of wood, which, I think, was put down in State street prior to that time; all other streets that were improved were macadamised. After this pavement was laid in Exchange street, on several occasions, I saw heavy loads taken up the hill by horses, and I noticed that the foothold facilitated their travel up the hill, and from the subsequent adoption of a similar pavement in the city of Rochester, for their improved streets, was a confirmation of Mr. Smith's theory in regard to the pavement which he put down. So far as my own observation has gone, I think the advantages which he claimed have been fully realized; and I saw it practically demonstrated during an examination last year, in driving over various streets in the city of Buffalo with Mr. Holloway. One street in particular which I remember—I don't remember its name—which had been laid by Mr. Holloway for more than ten years, which was apparently as perfect as when first laid. The courses in that street were of a uniform thickness of about two inches, which gave the appearance to the eye in driving over as if there were more in the joints than in the stone, to which Mr. Holloway called my attention in driving over the street.

296 Q. 12. With reference to the pavement on Exchange street, you say, "I was present upon the work while the pavement was being laid, and conversed with Mr. Smith in regard to it," and you then go on to give the conversation between yourself and Smith; state whether or not that conversation occurred at the time of the laying of the said pavement.

(Question in regard to conversation objected to.)

A. It did.

Q. 13. Have you yourself had personal ownership and interest in quarries and stone working?

A. In connection with a company, myself as a stockholder and managing superintendent of the works of that company. In the year 1854 I bought property at Little Falls, which consisted entirely of rock, upon which property I built a large paper mill for the manufacture of wood paper. Upon this property we opened a large quarry, and under my directions and supervision we opened a large quarry and split for nearly two years the rock upon that property, with which we built the mill, laid in courses from blocks which were formed by splitting, which resembled and were very much like the Broadway pavement; the product of this quarry was also used in buildings other than the paper mill in that village.

Q. 14. Did you ever work in stone with your own hands?

A. I did; in my father's quarry, and also in this quarry at Little Falls.

Cross-examination waived.

GEO. W. BEARDSLEE.

Sworn to before me.

JOSEPH GUTMAN, Jr.,
Examiner, &c.

Defendant rests.

297 NEW YORK, *March* 6, 1876.

Present, counsel for respective parties.

HENRY UTERHART, being recalled for defendant, deposes and says as follows:

Q. 1. Have you been already examined as a witness in this case?

A. I have.

Q. 2. Have you had photographs taken of the portions of the Brooklyn pavement represented by Defendant's Exhibits Uterhart Nos. 1, 2, and 3, respectively?

A. I have.

(Defendant's counsel puts in evidence photographs, which are marked, respectively, Defendant's Exhibit Uterhart No. 1, duplicate, J. G., jr.; Defendant's Exhibit Uterhart No. 2, duplicate, J. G., jr.; and Defendant's Exhibit Uterhart No. 3, duplicate, J. G., jr.)

Witness continues:

Defendant's Exhibit Uterhart No. 1, duplicate, is a photograph of the same portion of pavement of which Defendant's Exhibit Uterhart No. 1 is a representation, and the stones are numbered by the same numbers in both of them.

This is likewise true of No. 2 and No. 2 duplicate, and also of No. 3 and No. 3 duplicate.

H. UTERHART.

Subscribed and sworn to before me this 6th day of March, 1876.

JOSEPH GUTMAN, JR.,
Examiner.

298 At a stated term of the circuit court of the United States of America for the eastern district of New York, held at the United States court-rooms in the city of Brooklyn, on the 23 day of April, in the year of our Lord one thousand eight hundred and seventy-eight.

Present, the honorable Samuel Blatchford, circuit judge.

CHARLES GUIDET
vs.
THE CITY OF BROOKLYN.

Hearing ordered.

Appearance—

Mr. Wm. H. Field, } For complainant.
" George Harding, }
" Wm. C. De Witt, }
" Geo. Gifford, } For defendants.
" Wm. C. Witter, }

Mr. Harding opens argument for complainants.
" Gifford replies for defendant.
" De Witt reads brief " "
" Witter " testimony " "
" Harding rejoins for plaintiff.

Cause submitted; decision reserved.

299, 300 Circuit court of the United States for the eastern district of New York.

CHARLES GUIDET
vs.
THE CITY OF BROOKLYN.

MAY 15TH, 1878.

BLATCHFORD, J.:

I think the evidence shows that the pavements which were laid down in Rochester and Buffalo prior to the date of the plaintiff's alleged invention of what is covered by the claim of his patent contained the substance and principle of the pavements laid down by the defendant, and alleged to infringe such claim, as respects all the points of such infringement. Whatever difference there is, is one of degree, finish, and quality of stone, and not of structure or principle of arrangement, either as respects the stone blocks themselves or the pavement
301 composed of them. The bill is dismissed with costs.

G. Harding and W. H. Field for the plaintiff.

G. Gifford, W. C. De Witt, and W. C. Witter for defendant.

302 United States circuit court, eastern district of New York. In equity.

CHARLES GUIDET
vs.
THE CITY OF BROOKLYN.

The above-entitled cause having been brought to a hearing on pleadings and proofs, and having been argued by George Harding on behalf of complainant, and by George Gifford and Wm. C. De Witt on behalf of the defendant, and due deliberation having been had thereon, it is, on motion of Wm. C. De Witt, solicitor for defendant, ordered, adjudged, and decreed that the bill herein be dismissed with costs, to be taxed against the complainant.

N. Y., July 25, 1878.

SAM'L BLATCHFORD.

(Endorsed:) Decree. Filed & entered the 18th day of February, 1879.

303 Circuit court of the United States, eastern district of New York. In equity.

CHARLES GUIDET
vs.
THE CITY OF BROOKLYN.

To the honorable the Supreme Court of the United States:

The appeal of Charles Guidet, the above-named appellant, respectfully showeth that, on the 29th day of January, A. D. 1874, the above-named complainant in the circuit court of the United States for the eastern district of New York against the above-named defendant, the City of Brooklyn, in a suit in equity to enjoin and restrain the said The City of Brooklyn from infringing certain letters patent of the United States granted to Charles Guidet on the 23rd day of August, 1870, for a cer-

tain new and useful stone pavement, and owned by the above-
304 named appellant, and also for accounting and paying over of the
profits realized by them by reason of such infringement, and that a subpœna issued out of said circuit court was served on John W. Hunter, the mayor of the above-named defendant, on the 29th day of January, 1874; that the said defendant filed their answer to said bill of complaint, and the complainant replied thereto. Whereupon such proceedings were had in said cause that, on the 18th day of February, A. D. 1879, a final decree was entered in said circuit court, wherein it was in substance adjudged that the said bill of complaint be dismissed with costs; which said judgment and decree, as this appellant is advised, is erroneous, and ought to be reversed.

Wherefore this appellant appeals from the whole of the said decree
of the said circuit court to the Supreme Court of the United
305 States, and respectfully prays that the said decree of said circuit
court and the bill of complaint, answer, replication, depositions, evidence, and proceedings in said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed, or such other decree made as to the said Supreme Court shall seem just.

Dated New York, March 29, 1879.

CHARLES GUIDET,
By his attorney, WILLIAM HILDRETH FIELD.

GEORGE HARDING,
Of Counsel.

Allowed March 29, 1879.

SAM'L BLATCHFORD.

(Endorsed:) Appeal to Supreme Court. Filed May 21, 1879.

306 Circuit court of the United States for the eastern district of New York. In equity.

CHARLES GUIDET,
vs.
THE CITY OF BROOKLYN.

Know all men by these presents that we, Charles Guidet, Thomas Pearson, and J. Eugene White, both of the city, county, and State of New York, are firmly bound unto the City of Brooklyn in the sum of five hundred dollars, to be paid to the said City of Brooklyn, its successors or assigns, for the payment of which well and truly to be made we bind ourselves, our and each of our heirs, administrators, and executors, jointly and severally, by these presents. Sealed with our seals and dated the 17th day of March, eighteen hundred and seventy-nine.

Whereas the above-named Charles Guidet, complainant and
307 appellant in the above-entitled cause, has prosecuted an appeal to
the Supreme Court of the United States out of this court to reverse the decree rendered in the above-entitled cause, and entered with the clerk of this court on the 18th day of February, one thousand eight hundred and seventy-nine, by which decree it was adjudged that the bill of complaint of the said Charles Guidet be dismissed with costs:

Now, therefore, the condition of this obligation is such that if the above-named Charles Guidet, complainant as aforesaid, shall prosecute his said appeal to effect, and shall pay all damages and costs if the said decree shall be affirmed, then this obligation to be void, otherwise to remain in full force and virtue.

CHARLES GUIDET. [L. S.]
THOMAS PEARSON. [L. S.]
J. EUGENE WHITE. [L. S.]

Sealed & delivered and taken and acknowledge' this 17th day of March, 1879, before me.

[L. S.]

EUGENE W. ELIOT,
Notary Public, N. Y. C'y.

308 UNITED STATES OF AMERICA:

Thomas Pearson, being duly sworn, deposes and says that he is a freeholder residing in the city of New York, and that he worth the sum of five hundred dollars over and above his just debts and liabilities.

THO'S PEARSON.

Sworn to before me this 17 day of March, 1879.

EUGENE W. ELIOT,
Notary Public, N. Y. Co.

UNITED STATES OF AMERICA:

J. Eugene White, being duly sworn, deposes and says that he is a freeholder residing in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

J. EUGENE WHITE.

Sworn to before me this 17th day of March, 1879.

EUGENE W. ELIOT,
Notary Public, N. Y. Co.

I approve the sufficiency of the sureties to the within bond.

SAM'L BLATCHFORD.

Dated March 29, 1879.

309 U. S. circuit court, eastern district of New York. In equity.

CHARLES GUIDET
vs.
THE CITY OF BROOKLYN.

It is hereby stipulated by and between the parties to the above-entitled suit that during the pendency of an appeal of said suit to the Supreme Court of the United States each party may retain possession of the exhibits put in evidence by him or it; subject, however, to the inspection of the other party at any time, and to their production on the hearing of said appeal.

Dated May 19, 1879.

WILLIAM HILDRETH FIELD,
Compl't's Sol'r.
WILLIAM C. DE WITT, *Def't Sol'r.*

GEO. GIFFORD,
Of Counsel for Def'ts.

(Endorsed:) Stipulation as to exhibits. Filed May 23, 1879.

REC. 231—11

310 UNITED STATES OF AMERICA,
Eastern District of New York:

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York, in the second circuit, do hereby certify that the foregoing pages numbered from one to 309, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Charles Guidet against The City of Brooklyn, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, in the second circuit, this 13th day of August, A. D. 1879, and of the Independence the 104th.

[SEAL.] B. LINCOLN BENEDICT, *Clerk.*

311 Circuit court of the United States, eastern district of New York.

CHARLES GUIDET
vs.
THE CITY OF BROOKLYN.

By the honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the eastern district of New York.

To the City of Brooklyn:

Whereas Charles Guidet has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the eastern district of New York, made in favor of you, the said The City of Brooklyn, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Brooklyn, in the eastern district of New York, in the second circuit, the twenty-ninth day of March, in the year of our Lord one thousand eight hundred and seventy-nine.

SAML. BLATCHFORD.

312 (Indorsed:) U. S. circuit court eastern dist. of New York. In equity. Charles Guidet, app'l't, against The City of Brooklyn, resp'd't. Citation. William Hildreth Field, solicitor for app'l't, 237 Broadway, N. Y.

Service of a copy of the within citation on the 21st of May, 1879, is hereby admitted.

Brooklyn, May 21, 1879.

WILLIAM C. DE WITT,
Def't's Att'y.

(Indorsement on cover:) No. 231. Charles Guidet, appellant, vs. The City of Brooklyn. E. New York C. C. U. S. Filed 20th August, 1879.

ADDITION TO RECORD No. 231.

Supreme Court of the United States. No. 231. October term, 1881.

CHARLES GUIDET, APPELLANT,
vs.
THE CITY OF BROOKLYN.

Stipulation of counsel and addition to record.—Filed January 7, 1882.

1 U. S. Supreme Court. Oct. term, 1881. No. 231.

CHARLES GUIDET, APPELLANT,
vs.
CITY OF BROOKLYN.

It is hereby consented that the original letters patent to Charles Guidet, dated Jan'y 12, 1869, No. 85814, and the reissue letters patent to Charles Guidet, dated August 23, 1870, No. 4106, both of which were introduced in evidence in the court below, be printed by the clerk of this court and added to the record.

Dated Dec. 23, 1881.

GEO. HARDING,
Counsel for Appellant.
GEO. GIFFORD,
Counsel for Appellee.

(Indorsed:) U. S. Sup. C't. Oct. term, 1881. No. 231. Guidet v. B'klyn. Consent as to printing Exhibits.

2 The U. S. Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted Charles Guidet, dated January 12th, 1869, No. 85814, for improved stone pavement.

In testimony whereof, I, M. D. Leggett, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this seventh day of March, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

[SEAL.]

M. D. LEGGETT,
Commissioner.

3 No. 85814.

The United States of America to all to whom these letters patent shall come:

Whereas Charles Guidet, of New York, New York, has alleged that he has invented a new and useful improved stone pavement, and has made oath that he is a citizen of the United States; that he verily believes he is the original and first inventor or discoverer of the said invention, and that the same hath not to his knowledge and belief been previously known or used; has paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor:

These are therefore to grant to the said Charles Guidet, his executors, administrators, or assigns, for the term of seventeen years from the twelfth day of January, one thousand eight hundred and sixty-nine, the full and exclusive right and liberty of making, using, and vending to others to be used the said invention, a description whereof is given in the annexed schedule, and made a part of these presents.

In testimony whereof I have caused these letters to be made patent and the seal of the Patent Office to be hereunto affixed.

Given under my hand at the city of Washington this twelfth day of January, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-third.

W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.
[L. S.]
ELISHA FOOTE,
Commissioner of Patents.

(Here follows diagram marked page 4.)

5 UNITED STATES PATENT OFFICE.

Charles Guidet, of New York, N. Y. Letters patent No. 85814, dated January 12, 1869. Improved stone pavement.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Charles Guidet, of city, county, and State of New York, have invented a new and useful improved pavement; and I do hereby declare the following to be a clear, full, and exact description of the same, sufficient to enable others skilled in the art to which my invention appertains to fully understand and use the same, reference being had to the accompanying drawings, making a part of this specification, and in which—

Figure 1 represents a longitudinal section of this invention.

Figure 2 is a plan or top view thereof.

Similar letters of reference indicate corresponding parts in the two figures.

This invention relates to a pavement, which is composed of stone blocks forming parallelopipeds, the narrow ends or edges of which are cut smooth, while their broad sides are cut purposely uneven or rugged, the top edges of said broad sides being chamfered off in such a manner that said blocks, when put together, form close joints at their narrow ends, and open joints at the broad sides, and a pavement is obtained which offers a good foothold for the draught-animals, and at the same time a smooth surface for the wheels passing over the same.

A represents a section of my pavement, which is composed of a series of stone blocks, B.

These blocks are cut in the form of parallelopipeds, unlike the blocks used in what is known as the "Russ" "Belgian" pavement, which are cut in the form of inverted truncated pyramids; and furthermore, the narrow edges or ends, *a*, of my blocks are cut smooth, while the broad sides or surfaces, *b*, thereof are purposely cut rugged or uneven, and the top edges of these broad sides are chamfered off as shown at *c*, Fig. 1.

If two inverted truncated pyramids, as used in the Russ or Belgian pavement, are placed side by side, a close joint is formed on the top surface, and the pavement thus produced offers no foothold to the draught-animals. But by placing a series of my blocks, B, together, as shown in Fig. 2, the joints between the smooth narrow edges *a*, which run parallel with the sides of the street, become close, while the joints formed between the broad, rugged surfaces *b*, with the chamfered edges *c*, which joints run transversely across the street, become open, and a pavement is formed which offers a firm hold to the draught-animals, while it presents a smooth surface to the wheels passing over it. The open joints left between the rugged surfaces *b* of the blocks are filled with sand, and the pavement becomes perfectly firm and solid, and the single block is not liable to work loose.

I do not claim broadly as my invention a pavement composed of blocks made in the form of parallelopipeds; but

What I do claim, and desire to secure by letters patent, is—

A pavement composed of stone blocks made in the form of parallelopipeds, having their narrow edges or ends cut smooth, and their broad sides purposely cut rugged or uneven, and with chamfered edges, substantially as and for the purpose described.

CHARLES GUIDET.

Witnesses:
W. HAUFF.
ERNEST F. KASTENHUBER.

6 DEPARTMENT OF THE INTERIOR.

United States Patent Office, to all to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the reissue letters patent granted Charles Guidet, August 23, 1870, No. 4106, for improvement in stone pavement.

In testimony whereof I, V. D. Stockbridge, Acting Commissioner of Patents, have caused the seal of the Patent Office to be affixed, this fifth day of January, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and sixth.

[SEAL.]

V. D. STOCKBRIDGE,
Acting Commissioner.

7 (Reissue.)

No. 4106.

The United States of America to all to whom these letters patent shall come:

Whereas Charles Guidet, of New York, New York, has alleged he has invented a new and useful improvement in stone pavement, for which letters patent were issued to him, dated January 12, 1869, which letters having been surrendered, the same have been canceled, and new letters ordered to issue to him on an amended specification, and has made oath that he is a citizen of the United States; that he verily believes he is the original and first inventor or discoverer of the said improvement; and that the same hath not, to his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor:

These are therefore to grant to the said Charles Guidet, his executors, administrators, or assigns, for the term of seventeen years, from the twelfth day of January, one thousand eight hundred and sixty-nine, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement, a description whereof is given in the annexed schedule and made a part of these presents.

In testimony whereof I have caused these letters to be made patent and the seal of the Patent Office to be hereunto affixed.

Given under my hand at the city of Washington this twenty-third day of August, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States of America the ninety-fifth.

W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

[SEAL.]

SAM'L A. DUNCAN,
Acting Commissioner of Patents.

(Here follows diagram, marked page 8.)

4106.

UNITED STATES PATENT OFFICE.

Charles Guidet, of New York, N. Y. Improvement in stone pavement.

Specification forming part of letters patent No. 85814, dated January 12, 1869; reissue No. 4106, dated August 23, 1870.

To all whom it may concern:

Be it known that I, Charles Guidet, of the city, county, and State of New York, have invented a new and improved stone pavement; and I do hereby declare the following to be a full, clear, and exact description thereof, which will enable those skilled in the art to make and use the same, reference being had to the accompanying drawings forming part of this specification, in which drawings—

Figure 1 represents a longitudinal section of this invention. Fig. 2 is a plan or top view thereof.

Similar letters indicate corresponding parts.

This invention relates to a pavement composed of stone blocks, which are made in the form of parallelopipeds, and the surfaces of which are so prepared that the blocks, when placed together, will form close joints in the direction parallel with the sides of the streets, or in a longitudinal direction, while the joints running transversely to the street remain open at the top, and thereby a pavement is obtained which offers a good foothold for the draft-animals, and at the same time a smooth surface for the wheels passing over the same.

The edges of the blocks adjacent to the transverse open joints may be chamfered off, so as to insure a good foothold for the draft-animals.

In the drawings the letter A designates a section of my pavement, which is composed of a series of stone blocks, B. These blocks are cut in the form of parallelopipeds, and they are so prepared that the same, when put down on the street will form close joints in a longitudinal direction, or parallel with the sides of the street, and open joints in a direction transversely to the street. To effect this purpose, the narrow ends *a* of my blocks are cut smooth, so that the joints between adjoining blocks are close, and the broad sides or surfaces *b* of my blocks are left rugged, or cut so that the joints between adjoining blocks will be open. The top edges *c* of these broad sides may be chamfered off, as shown in the drawings.

If a street is paved with truncated pyramids, as used in the Russ or Belgian pavement, close joints are formed on the top surface of the pavement both in a longitudinal and in a transverse direction, and said surface offers no foothold to the draft-animals passing over the same; but by placing a series of my blocks B together, as shown in Fig. 2, close joints are formed in a longitudinal direction, and open joints in a transverse direction, and a stone pavement is obtained which offers a firm foothold to the draft-animals, while it presents a comparatively smooth surface to the wheels of vehicles passing over it, and at the same time each block is firmly retained in position by the adjoining blocks, without requiring any intermediate layers of stone or other material.

The interstices between the rugged surfaces of the blocks are filled with sand, whereby the firmness and solidity of the pavement are still further increased.

I am aware that pavements have been produced of blocks made in the form of parallelopipeds; but, in order to produce open transverse joints, it was found necessary to interpose between the adjoining blocks thin strips of wood or stone.

I do not claim broadly, therefore, a pavement composed of blocks made in the form of parallelopipeds; but

What I claim as new, and desire to secure by letters patent, is—

A pavement composed of stone blocks made in the form of parallelopipeds, having their narrow edges or ends cut smooth, and their broad sides purposely cut rugged or uneven, when the blocks are arranged with their rugged surfaces transversely to the street, substantially as described.

CHARLES GUIDET.

Witnesses:
W. HAUFF,
C. WAHLERS.

(Indorsed:) Sup. Court U. S., 1881. Oct. term. No. 231. Charles Guidet, app't, v. The City of Brooklyn. Stipulation of counsel and addition to record. Filed Jan'y 7, 1882.

No. 231—2

OFFICE SUPREME COURT U.S.
FILED
MAR 16 1882
JAMES H. McKENNEY, Clerk

Department of City Works.

BROOKLYN.

CONTRACT AND SPECIFICATIONS
for
REPAVING MYRTLE AVENUE from
FULTON STREET to BROADWAY, from curb to curb,
with Granite Blocks.

This Agreement made and concluded this 24th day of June, in the year one thousand eight hundred and seventy-three, between the City of Brooklyn, by the Board of Commissioners of City Works of the first part, and Edward Freel and John McNamee, in the State of New York, parties of the second part,

Witnesseth, that the said parties of the second part have agreed, and, by these presents, do agree with the said parties of the first part for the consideration hereinafter mentioned, and contained, and, under the penalty expressed in a bond bearing even date with these presents, and hereunto annexed, at their own proper cost and expense, to do all the work and furnish all materials called for by this agreement, to which prices are herein affixed in the manner and under the conditions herein specified; and have further agreed that the said Board shall be and are hereby authorized to appoint from time to time such Civil Engineer, and assistants and Inspectors under him, as they may deem proper, to inspect the materials to be furnished and the work to be done under this agreement, and to see that the same strictly corresponds with the specifications hereinafter set forth.

To prevent all disputes and litigation, it is further agreed by and between the parties to this contract, that said Engineer shall in all cases determine the amount or quantity of the several kinds of work, which are to be paid for under this contract, and he shall decide all questions which may arise relative to the execution of this contract on the part of the contractor; and his estimates and decisions shall be final and conclusive.

Specification and Agreement for Granite Block Pavement.

Materials and work to comply with specifications.

All the materials furnished, and all the work done, which, in the opinion of the Engineer shall not be in accordance with this specification, shall be immediately removed, and other materials furnished, and work done that will be in accordance therewith.

Work to be carried on as the Commissioners order it.

The work under this agreement is to be prosecuted at and from as many different points, in such part or parts of the street on the line of the work, as the Board of Commissioners may from time to time determine.

Fences and lights for public safety.

Space that may be stopped up at one time.

Proper fences or guards are to be erected at night wherever the safety of the public requires it, and a sufficient number of lights kept burning on or near the work from twilight in the evening until sunrise. Not more than a space of one block shall be stopped up at the same time in any street or avenue, and the obstructions shall be removed within two days after the carriage way is completed.

Obstructions to be removed at commencement.

In case there shall be at the time stipulated for the commencement of the work, any earth, rubbish, or other incumbrance on the line of the work, the same is to be removed at the expense of the contractors.

Bridge Stones.

Where new bridge stones are required, they are to be furnished in conformity with the following description, to wit:

Description of bridge stones.

The bridge stones to be of the best quality of North River Blue Stone, or Sound Granite, free from seams and imperfections. Each stone to be not less than four feet long and two feet wide, and not less than six nor more than eight inches thick throughout, and dressed to an even face on top, bottom, sides, and ends. The ends of the new bridge stones are to be cut to such curve as the Engineer may direct, and also so as to form close and even joints, from top to bottom, when laid. The new stones to be in quality and workmanship similar to the pattern at the office of the Engineer, and, when laid, to be close jointed from top to bottom, on sides and ends.

Inspection of bridge stones.

The bridge stones, as also the curb stones, will be carefully inspected after they are brought on the line of the work, and all those which in quality and dimensions do not confirm strictly to these specifications will be rejected, and must be immediately removed from the line of the work.

Frames and heads for man-holes and stop-cocks.

All the frames and heads for sewer man-holes, and for water or gas stop-cocks on the line of the work, or such as may be sent in lieu of them, are to be reset on a level with the new pavement, under the direction and by this department.

Curb.

Curb gutter stones.

The curb, which may be retained on the line of the work, are to be readjusted and adapted to the grade and level of the proposed new work where necessary, under the direction of the Engineer.

Where new curb stones are required, they shall be of North River Blue Stone of the best quality, and shall not be less than three feet in length, five inches thick, and twenty inches in width throughout, and shall be smooth cut and squared at the ends, so as to form close joints, and to be cut on the face ten inches below the top, with a bevel on top of one-half inch, and set to the grades as given by the Engineer.

Flagging.

All the flagging that may be disturbed by the setting of the curb on the line of the street, during the progress of the work, must be relaid as fast as the curb is set.

Inspection of Materials.

Materials Inspected.

On the day designated by the said Commissioners for the commencement of the work at any point or points on the line thereof, the said contractors shall, before disturbing or making any alterations on the present roadway, haul upon the line of the work, at each of such points, a sufficient quantity of material for the paving of at least the space between any two intersecting streets.

Rejected materials forthwith removed.

The material so brought upon the ground, and before being laid, will be carefully and thoroughly inspected, as provided for in the specification, and all rejected material shall be immediately removed by the contractor from the line of the work.

The contractor will then be required to pile such material as may have been approved, neatly in front of the sidewalk, and in such way as will provide sufficient passageway on the line of the sidewalks, and also permit of free access from the roadway to each house on the line of the street.

After this inspection has been made, and after all the rejected materials shall have been removed entirely from the line of the work, and the accepted materials piled in the manner aforesaid, and not until each of these conditions shall have been faithfully fulfilled, will the contractor be permitted to proceed with the preparation of the road-bed for the new pavement.

It being expressly understood that the work is to be prosecuted in sections, of not less than the space between any two intersecting streets, and that these provisions relative to the hauling, inspection, removal, and piling of material, shall apply to the work on each side of said sections on the whole line of the work.

Old Materials.

Old materials.

All old materials, including the cobble stones, which become the property of the contractor, shall be immediately removed by him; the subsoil or other matter is then to be excavated or removed to a depth fifteen inches below the top line of the proposed new pavement when fully completed and removed from the line of the street. When, in the opinion of the Engineer, it is proper to leave the present subsoil on the line of the improvement, such reduction in the contract price for the work shall be made as the Engineer shall deem just and equitable; for the subsoil which shall so remain undisturbed, such reduction to be made in the monthly estimate for the work. To the depth specified above, the material is to be removed and not used in any part of the work.

Preparation of Road-bed, &c.

Preparation of Foundation.

Care must be taken in excavating to preserve the proper crown. All holes or inequalities to be filled to a proper level with sand or gravel only; such filling to be well and faithfully compacted before placing thereon of the sand-bed. Upon the foundation as thus prepared, is to be laid a bed of clean, sharp sand, to the depth necessary to bring the top of the pavement to the proper grade.

The contractor will compact the foundation of the sand-bed thus laid, by rammers or rollers, which method of bringing the foundation to a compact body, will in all cases be strictly exacted.

Laying the Cross Walks, etc.

Laying and relaying the cross-walks.

The parallel cross-walks are to be relaid with the best of the bridge stones now on the line of the work, if in accordance with the specification, new bridge stones to be used to supply deficiencies. The present bridge stones when relaid, are to be so redressed on the ends and sides as to form close joints from top to bottom; all the new bridge stones, and such of the present bridge stones as may be relaid are to be well and firmly bedded on a foundation of sand or gravel, similar in depth and quality and preparation to that already described, and laid with close joints from top to bottom on sides and ends, the courses to be so laid that the transverse joints will be broken by a lap of at least one foot. So much of the present pavement or carriage-way, curb or gutter stones, on the exterior lines of the cross-walks, as in the opinion of the Engineer may become necessary to be reset in order to conform to the new work, it is to be adjusted to the proper grade, and to be considered as part of the work to be done under this contract, and, as such, to be done without extra charge therefor.

The stone blocks to be of granite or gneiss of uniform quality, similar to specimens in Engineer's office, and to be not less than eight (8) nor more than fifteen (15) inches in length, and not less than four (4) nor more than five (5) inches in width, and not less than eight (8) nor more than nine (9) inches in depth. The blocks, which are twelve (12) inches in length, must in all cases be eight (8) inches in depth, and at least one-third of all the blocks used must be of this dimension.

The subsoil having been excavated as already specified, to a depth of fifteen inches below the top of the pavement, and all inequalities made good, to a true grade and crown, the paving block shall be set in courses of selected stone of uniform width and depth across the street, breaking joints at least four inches, and with open joints across the street, and closed joints parallel with the street. At the intersection of the cross streets, the pavement shall be laid on a grain according to directions of the Engineer. As the blocks are laid, they shall be covered with clean, fine sand, which shall be swept with proper brooms, until all the joints become filled. The blocks shall then be thoroughly rammed to a firm, unyielding bed of uniform surface, to conform to the grade and crown of the street. No ramming shall be done within twenty feet of the face of the work that is being laid. Whenever the pavement shall be so far laid as may be thought desirable, it shall be covered with a second good and sufficient coat of clean sand, and immediately thoroughly rammed until the work is made solid and secure.

It is to be understood that no unnecessary obstruction be offered to the running of the cars on the railroad track, and that the curb and gutter be set in advance some 1,000 feet of any work of paving, and where grade is altered by excavation, the railroad company be afforded opportunity to adjust their track to conform.

Clearing Up.

Removal of surplus materials, rubbish, &c.

All surplus materials, earth, rubbish, sand, and refuse stones, or other material, are to be removed from the line of the work as rapidly as the work progresses, or within a reasonable time, as the Engineer may determine. Fourteen days after the completion of the work, the covering sand shall be swept into heaps and immediately removed from the line of the work; and unless this be done within forty-eight hours next thereafter, to the satisfaction of the Engineer, the work will not be considered as completed according to this agreement.

Loss or damage.

All loss or damage arising out of the nature of the work to be done under this agreement, or from any unforseen obstructions or difficulties which may be encountered in the prosecution of the same, or from the action of the elements, or from encumbrances on the line of the work, to be sustained by the said Contractor.

Work may be suspended.

The prosecution of the work is to be suspended at such times and for such period as the said Commissioners may from time to time determine.

(*A*). Where the term Engineer occurs, it is understood to refer to the Engineer of the Board of City Works, or his authorized assistants.

Security to be required for repairs.

(*B*). And the said party of the second part hereby further agrees that the said party of the first part shall be, and they are hereby authorized to retain, out of the moneys payable to him under this agreement, the certain sum of fifteen cents for each square yard of pavement laid under this agreement, and to expend the same in the manner hereinafter provided for, in making such repairs to the work done under this agreement as the said Board of Commissioners may deem necessary.

Repairs to be made.

And it is further agreed that, if at any time during the period of nine months from the date of the acceptance by said Commissioners of the work under this agreement, the said work or any part or parts thereof, (excepting only such part or parts of the work as, after the completion thereof, may have been disturbed in the construction or repairs of sewers or drains, or in laying or repairing of gas or water main or service pipes,) shall in the opinion of said Commissioners require repair, and the said Commissioners shall, by their Engineer notify said party of the second part to make the repairs so required, the said party of the second part will immediately commence and complete the same to the satisfaction of said Commissioners; and in case of failure or neglect on his part so to do, within forty-eight hours from the date of the service of the aforesaid notice, that then the said Commissioners shall have the right to purchase such materials as they shall deem necessary, and to employ such person or persons as they may deem proper, and to undertake and complete the said repairs, and to pay the expense thereof out of the said certain sum retained for this purpose by the said parties of the first part, as before mentioned.

And the parties of the first part hereby agree, upon the expiration of the said period of nine months, provided that the said work shall at that time be in good order, which fact shall be determined by a certificate to that effect, signed by the Engineer of the Commissioners, to pay to the said party of the second part the whole or such part of the sum aforesaid as may remain after the expense of making said repairs in the manner aforesaid shall have been paid therefrom.

Measurement.

(*C.*) The said party of the second part further agrees, that the return of the Engineer of the Gommissioners shall be the account by which the amount of work done shall be computed, and that he shall not be entitled to demand or receive payment for any work upon, in, or about the said work as extra work, unless ordered in writing by the Commissioners through their Engineer to do the same as extra work, and at a price therefor agreed upon previously to its commencement.

Work to commence.

When to be completed.

Personal attention.

(*D.*) The said party of the second part hereby further agrees, that he will commence the aforesaid work on signing this contract, and at such point or points as the Board may designate and fully complete the same in accordance with this agreement, on or before the first day of June, 1874, one-half the total amount of work under this contract being completed in the year 1873; that he will give his personal attention properly to the faithful prosecution of said work; that he will not sublet the aforesaid work, but will keep the same under his own control, and that he will punctually pay the workmen who shall be employed on the aforesaid work.

Contract may be declared annulled for violation, &c.

(*E.*) The said party of the second part further agrees that, if at any time the Commissioners shall be of opinion, and shall, by their Engineer, notify them to that effect, in writing, that the said work, or any part thereof is unnecessarily delayed, or that the said Contractor is willfully violating any of the conditions or covenants of this contract, or is executing the same in bad faith, they shall have the power to notify the said Contractor to discontinue all work under this contract or any part thereof, and thereupon the said Contractor shall cease to continue said work or such part thereof, and the said Commissioners shall thereupon have the power to place such and so many persons as they may deem advisable, by contract or otherwise, to work at and complete the work herein described, or any part thereof, and to use such materials as they may find upon the line of said work, or to procure other materials for the completion of the same, and to charge the expense and labor of said materials to the aforesaid Contractor, and the expense so charged shall be deducted and paid by the parties of the first part out of such moneys as may then be due, or may at any time thereafter become due to the said Contractor under and by virtue of this agreement, or any part thereof; and in case such expense is less than the sum which would have been payable under this contract, if the same had been completed by him, he shall be entitled to receive the difference; and in case such expense shall exceed the last said sum, he shall pay the amount of such excess to the parties of the first part, on notice from the said Board of the excess so due.

Indemnification of the City.

(*F*). And the said party of the second part further agrees that he will indemnify and save harmless the parties of the first part from all suits or actions of every name and description brought against them for or on account of any injuries or damages received or sustained by any party or parties, by or from the said party of the second part, his servants or agents, in the prosecution of said work, or by or in consequence of any negligence in guarding the same, or of any improper materials used in its prosecution, or for royalty growing out of the use by them of any patented article, machine or material of any kind, or by or on account of any act or omission of the said party of the second part or his agents ; and the said party of the second part hereby further agrees that the whole or so much of the moneys due to him under and by virtue of this agreement, as shall or may be considered necessary by the Commissioners, shall or may be retained by the said parties of the first part until all such suits or claims for damages as aforesaid shall have been settled, and evidence to that effect furnished to the satisfaction of the said Commissioners.

And the said party of the second part hereby further agrees to receive the following prices as full compensation for furnishing all the materials and labor which may be required for the prosecution of the whole of the work to be done under this agreement, and, in all respects, completing the same, to wit :

For the pavement, complete, per square yard, the sum of three dollars and eighty-two cents. ($3.82)

For the new bridge stones, per square foot, the sum of fifty-seven cents. (57c.)

And for removing the present bridge stones, per square foot, the sum of ten cents. (10c.)

For furnishing and setting new curb-stones, including replacing of the sidewalk necessarily disturbed, per running foot, the sum of seventy-five cents. (75c.)

For jointing and relaying old curb, including replacing of the sidewalk necessarily disturbed, per running foot, the sum of fifteen cents. (15c.)

It being expressly understood that the measurements shall be taken after the laying of the pavement, and that the aforesaid prices cover the furnishing of all the different materials and labor, and the performance of all the work mentioned in this specification and agreement, and in conformity with the lines, grades, crown and directions in detail of the Engineer of the Commissioners.

70 per cent. payments when made.

Final payment.

And it is further agreed that payments will be made to the said party of the second part, by monthly installments of seventy per cent., on the amount of work performed under and in accordance with the provisions and stipulations of this agreement, and within thirty days after the completion of the work, and the certificate of the Engineer, that the terms of this agreement have been complied with, the balance due shall then be paid, with the exception of the reservation for repairs, which shall be paid in accordance with the stipulations embraced in article *B*, of the agreement.

Dep't. City Works.
Seal.
City of Brooklyn.

In witness whereof, the parties of these presents have hereunto set their hands and seals, the day and year first above written.

LOREN PALMER, [SEAL.]
President.
EDWARD FREEL, [SEAL.]

Attest:
D. L. NORTHRUP,
Secretary,
JOHN McNAMEE, [SEAL.]

Signed and sealed in presence of }
CHAS. H. PELLETREAU, JR.

Know all men by these presents that we, EDWARD FREEL and JOHN McNAMEE (firm name Freel & McNamee). O. F. BLEAKNEY, THOMAS D. HUDSON, are held and firmly bound unto the City of Brooklyn, in the sum of sixty thousand dollars, lawful money of the United States of America, to be paid to the said City of Brooklyn, this successors and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, dated the 24th day of June, in the year one thousand eight hundred and seventy-three.

Whereas the said EDWARD FREEL and JOHN McNAMEE have entered into a contract with the City of Brooklyn (by their Commissioners, of the Department of City Works), bearing date the 24th day of June, eighteen hundred and seventy three.

Now the condition of this obligation is such, that if the said

Freel & McNamee shall well and truly keep and perform all the terms and conditions of the said contract on their part to be kept and performed, and shall indemnify and save harmless in the the said City of Brooklyn, as herein stipulated, then their obligation shall be of no effect; otherwise it shall remain in full force and virtue.

EDWARD FREEL, [SEAL.]
JOHN McNAMEE, [SEAL.]
THOMAS D. HUDSON, [SEAL.]
O. F. BLEAKNEY. [SEAL.]

Sealed and delivered }
in presence of }

CHARLES H. PELLETREAU,
Notary Public.

COUNTY OF KINGS, } ss.:
City of Brooklyn, }

O. F. BLEAKNEY and THOMAS D. HUDSON, being each for himself duly sworn, says that he is a freeholder in the City of Brooklyn, and is worth the sum of sixty thousand dollars over and above all his debts and liabilities, and over and above all property by law exempt from execution.

O. F. BLEAKNEY,
THOMAS D. HUDSON.

Sworn to before me, this }
24th day of June, 1873, }

CHARLES A. PELLETREAU,
Notary Public.

A true copy.

DEPARTMENT OF CITY WORKS,
Brooklyn.
D. S. NORTHRUP,
Secretary.

January 25th, 1882.

In the United States Supreme Court.

CHARLES GUIDET, APPELLANT,

vs.

THE CITY OF BROOKLYN, APPELLEE.

BRIEF FOR APPELLANT.

GEORGE HARDING,
Counsel for Appellant.

[illegible]

In the Supreme Court of the United States.

Charles Guidet, Appellant,
vs.
The City of Brooklyn.
231.

APPELLANT'S STATEMENT OF CASE.

This is a suit brought by Charles Guidet against the City of Brooklyn for the alleged infringement of re-issued letters patent, No. 4106, issued to the said Charles Guidet, on the 23d of August, 1870, for an improvement in stone pavements, the original letters patent having been dated January 12th, 1869.

The bill of complaint, in this case, was filed on the 29th of January, 1874, and recites the issue of the original letters patent to Charles Guidet, its surrender and re-issue; and a prior adjudication as to the validity of said re-issued letters patent in the Circuit Court of the United States for the District of New Jersey. The bill also alleges that the patentee has extensively applied his invention to practical use, and that he had been and was, but for the defendant's infringement, in the undisturbed and exclusive use and enjoyment of the rights secured to him by the said re-issued letters patent.

The bill further alleges infringement by the respondent, the city of Brooklyn, and prays an injunction and an account.

The respondent appeared and filed an answer to this bill of complaint denying the infringement; and also assailing the validity of the re-issued letters patent to Guidet.

During the course of the proceedings in the suit the answer was further enlarged by two copious amendments, the said answer and additions occupying pages 5 to 21 of the record.

In support of their allegations as to the invalidity of the re-issued letters patent to Guidet, the respondent alleges—

First.—That the specification of the re-issued letters patent is incomplete and ambiguous, and does not disclose the invention in such full and exact terms as to enable a person skilled in the art of constructing roads and pavements to make and use the same.

Second.—That the stone pavement patented to Guidet is without utility and value; but, on the contrary, is impracticable, and has never been used by the patentee or others.

Third.—That the re-issue is void as being for a different invention from that disclosed in the model, specification, and drawing of the original letters patent.

Fourth.—That the claim of the re-issued letters patent is not for patentable subject-matter.

Fifth.—That the stone pavement, which is the subject-matter of the re-issued letters patent sued upon, was in public use, with the knowledge and consent of the inventor, for more than two years prior to his original application for letters patent therefor.

Sixth.—That Charles Guidet, the patentee of the re-issued letters patent sued upon, was not the true, original, and first inventor of the stone pavement which is the subject-matter of the claim thereof, but that the said stone pavement, or a pavement in substantial and material respects the same as that described in the patent, had been, prior to his alleged invention (*a*), described and shown in various prior publications enumerated in the answer (*b*), described and shown in numerous prior patents, which are set out in the answer (*c*), in public use in certain specified localities in the city of New York, in the city of Brooklyn, in the city of Boston, in the city of Philadelphia, in the city of Charlestown, Mass., in the city of Newark, N. J., in the city of New Orleans, La., the cities of Syracuse, Lockport, Troy, Albany, Buffalo, Utica, and Rochester, all in the State of New York, in the city of Providence, R. I., at Fox Island, in the State of Maine, and at Millstone Point, in the State of Connecticut.

The answer further sets out prior use in a number of foreign cities, and recites the names of an enormous number of people whom it is alleged had knowledge of the prior use of the patented pavement in the various cities, towns, and places above enumerated.

To this answer a replication was filed by the complainant, and proof having been taken, the case was argued before his Honor Judge Blatchford, and a decree entered dismissing the bill of complaint (Record, page 159). From this decree an appeal was taken to this Court, assigning for error the action of the lower court in dismissing the bill of complaint.

OPINION OF THE COURT.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

Charles Guidet

vs.

The City of Brooklyn.

MAY 15th, 1878.

BLATCHFORD, J.:—

I think the evidence shows that the pavements which were laid down in Rochester and Buffalo, prior to the date of the plaintiff's alleged invention of what is covered by the claim of his patent, contained the substance and principle of the pavements laid down by the defendant, and alleged to infringe such claim, as respects all the points of such infringement. Whatever difference there is, is one of degree, finish, and quality of stone, and not of structure or principle of arrangement, either as respects the stone blocks themselves or the pavement composed of them. The bill is dismissed with costs.

I.

THE GUIDET PATENT IS NOT VOID FOR UNCERTAINTY AND DOES DESCRIBE AND CLAIM PATENTABLE SUBJECT-MATTER.

(See Patent Exhibit Re-issue No. 4106, printed at the end of brief).

On these questions no testimony was taken on behalf of the respondent; but counsel confined himself to criticism of the language of the specification alleging ambiguity, because the patentee describes the blocks of which his pavement is to be constructed as being "parallelopipedons" having their broad sides "left rough or purposely cut so." It was contended below that a parallelopipedon was a mathematical figure having *plane* sides, and that therefore a block such as is described and shown by the patentee and of which one or more of the six surfaces was *rough, or uneven*, could not be a parallelopipedon, a proposition, perhaps, mathmatically correct, but which would not be likely to mislead a practical man in the reading or carrying into effect of Mr. Guidet's specification.

II.

THE SUBJECT-MATTER OF THE SPECIFICATION AND CLAIM OF THE RE-ISSUED LETTERS PATENT TO GUIDET DOES INVOLVE INVENTION.

Apart from the question of anticipation, which the respondent in this case made strenuous efforts to prove, no attempt was made in this case to show a state of the art of building pavements different from that described by the patentee in his specification as being old and well known prior to his invention.

The peculiar shape of the patentee's block—that of an oblong parallelopipedon—is illustrated in the drawing attached to the patent printed at the end of the brief.

These blocks are described in the patent as follows:—

> "In the drawings, the letter A designates a section of my pavement, which is composed of a series of stone blocks, B. These blocks are cut in the form of parallelopipeds, and they are so prepared that the same, when put down on the street, will form close joints in a longitudinal direction, or parallel with the sides of the street and open joints in a direction transversely to the street. To effect this purpose, the narrow ends *a* of my blocks are cut smooth, so that the joints between adjoining blocks are close, and the broad sides or surfaces *b* of my blocks are left rugged, or cut so, that the joints between adjoining blocks will be open. The top edges *c* of these broad sides may be chamfered off, as shown in the drawings."

These blocks, the patentee states, are to be laid with their broad and *rugged* sides transversely to the line of the street. The longitudinal joints between the narrow sides or smoothed ends of the blocks thus forming a close joint in a longitudinal direction to the street, and the uneven or rough broad side of the stone forming an open joint or groove transversely to the street, and a pavement being thus formed which from the absence of longitudinal grooves, or open joints, affords a comparatively smooth surface for wheels to travel over and is not liable to be worn into ruts; while its open longitudinal joints form a foothold for the draft animals. Besides the avoidance of the ruts by the close longitudinal joints of the stones of which it is made, the durability and solidity of the patented pavement is further enhanced by the fact that by his methed of construction each block is firmly retained in position by direct contact with adjoining blocks; thus, as is shown in the drawing of the patent, each block is held in position and prevented from being displaced or moved by the weight upon it, by direct contact with six other blocks with each of which, owing to the natural inequalities of the stone, it may be said to be *interlocked*.

Another element of stability in the pavement is the regular flat surface of the lower sides of the parallelopipedon blocks, which gives them each an even, firm foothold on the ground beneath the pavement, the importance of which is well shown by the Eliot Broadway experiment (Record, p. 63).

The claim of the patentee is as follows:—

> "A pavement composed of stone blocks made in the form of parallelopipeds, having their narrow edges or ends cut smooth, and their broad sides purposely cut rugged or uneven, when the blocks are arranged with their rugged surfaces transversely to the street, substantially as described."

The state of the art of making pavements is described by the patentee in his specification as follows:—

> "If a street is paved with truncated pyramids, as used in the Russ or Belgian pavement, close joints are formed on the top surface of the pavement both in a longitudinal and in a transverse direction, and said surface offers no foothold to the draft animals passing over the same; but, by placing a series of my blocks B together, as shown in Fig. 2, close joints are formed in a longitudinal direction, and open joints in a transverse direction, and a stone pavement is obtained which offers a firm foothold to the draft animals, while it presents a comparatively smooth surface to the wheels of vehicles passing over it, and at the same time each block is firmly retained in position by the adjoining blocks, without requiring any intermediate layers of stone or other material.
>
> "The interstices between the rugged surfaces of the blocks are filled with sand, whereby the firmness and solidity of the pavement are still further increased.
>
> "I am aware that pavements have been produced of blocks made in the form of parallelopipeds; but, in order to produce open transverse

> joints, it was found necessary to interpose between the adjoining blocks thin strips of wood or stone."

That the pavement described and claimed by the patentee as his invention does involve invention over the Russ or Belgian pavements, will probably not be disputed, such a pavement indeed being open to all the objections observed and provided against by Guidet in his patented invention; even its smooth surface being liable to be soon destroyed, owing to the fact that the absence of contact between adjacent sides of the truncated pyramidal stones and their wedge-like shape would soon permit and cause some of them to be driven down and away from the others, thus breaking up the smoothness and continuity of the surface of the pavement, and resulting in ruts and holes, which soon would cause its entire destruction. Besides the pyramidal blocks of the Belgian pavement, the patentee mentions, as an old pavement, one made of blocks in the form of parallelopipeds, in which an open transverse joint was obtained by interposing between adjoining blocks thin strips of wood or stone. These pavements, which are known and spoken of in the evidence as the Nicholson pavements, were composed of stones in the form of parallelopipeds, but differing from the blocks described by Guidet, in the fact that the sides, which formed the transverse joints, were like the sides which formed the joints parallel to the street —perfectly smooth—and thus if the blocks were laid together, no foothold would be afforded to the draft animals. This difficulty was recognized by Nicholson and the builders of his pavement, and provided against by interposing between two adjoining rows of wooden or stone blocks *strips of wood, stone, or gravel,* thus keeping the blocks *apart* from each other, and forming the necessary open transverse joints, but obviously by means differing widely from that described and used by Guidet, and at the expense, to a considerable extent, of the elements of firmness and durability due to the direct contact of the stones in the Guidet patent. This Nicholson pavement was widely used, and its faults were so thoroughly demonstrated that it has now almost entirely disappeared.

A good, firm, and durable pavement was greatly desired and needed, and a prime necessity in the great streets of our large cities; and it is a matter of public notoriety, and of public scandal, how pavement after pavement has been tried on such streets only to be taken up and replaced by a new venture. Of all the streets in the country, Broadway, in the city of New York, probably stood in the greatest need of such a pavement, and here the weakness and faults of one pavement after another were fully demonstrated, until in 1872 Guidet placed upon it his patented pavement, which still remains there, and which was found entirely capable of standing even the tremendous test to which it has there been exposed.

Since Guidet's demonstration of the value of the pavement; and how enduring it was even under the travel of Broadway, it has been followed in Brooklyn and by other cities.

If Guidet's pavement is no advance upon the Nicholson pavement described in the specification, why does not the city of Brooklyn lay its pavements in that way? On looking back it seems very simple to obtain the open joints of the Nicholson pavement, by roughing the transverse sides, but no one prior to Guidet conceived the idea of making pavements of blocks having the general figure of a parallelopipedon, and having their sides, which were laid transversely to the streets, purposely left or cut rough so as to form such a joint. In all the voluminous proof taken by the respondent, they did not go one step beyond the admissions of the patent as to the prior state of the art.

They do not show, or attempt to show, that a single pavement was laid in any of the large cities mentioned by them in their answer, which was made of such blocks, or laid in such a way as the Guidet pavement. They say in their answer it was done in Philadelphia, in New York, in Boston, in New Orleans, and numerous other places; but their proof fails to show that a single yard of such a pavement was laid in any of these cities, and their proof, or attempt to prove, anticipation is confined to the cities of Rochester and Buffalo. If, then, the pavements of Rochester and Buffalo shall prove not to be the Guidet pavement, and not to differ substantially from the Russ and Nicholson pavements, and the fact being undisputed in the record that Guidet was the first to introduce and demonstrate the value of this kind of pavement, I submit to your Honors that he did a new thing, and is entitled to the patent for just what he did do.

III.

THE RE-ISSUED LETTERS PATENT IS NOT VOID AS BEING FOR A DIFFERENT INVENTION FROM THAT DISCLOSED IN THE ORIGINAL PATENT.

This issue is set out in the respondent's answer in the following language:—

> "And the defendant further answering, upon information and belief, denies that the said letters patent surrendered by said Charles Guidet were inoperative by reason of any defects or insufficiency in the specification which the said re-issue did or was intended to remedy; but the defendant is informed and believes, and therefore alleges, that said letters patent were surrendered, and specification of claim was amended, with fraudulent and deceptive intention on the part of the said Charles Guidet, and that the said re-issue is for different matter from that of the original patent, and embraces matter not in the drawings, model, or specification of original patent, and is for matter not patentable, and that the said claim of said re-issued patent is a claim which was rejected by the Patent Office upon the original application of said Guidet, and fraudulently inserted upon the re-issue."

As appears by the respondent's own statement, the claim of the re-issued letters patent is the one which the patentee asked for when he filed his original application, and the claim was then refused him by the mistake of the Commissioner of Patents, which mistake was afterwards and promptly rectified by the surrender and re-issue. Since the present claim, then, formed a part of the original application, the objection that it is new matter certainly can not apply to it, and this Court has expressly held that where a party is wrongfully refused a claim it is a proper and sufficient ground on which to surrender the original and procure a new patent embodying such a claim. A comparison of the re-issued and original patent will show the description of the invention to be in all substantial respects the same. The patentee speaks in both of the roughness of the transverse sides and the smoothness of the longitudinal sides as necessary elements for producing the results obtained by his patented pavement. The chamfering was an additional element, an additional feature of a thing which was complete without it. The patentee sought obtain his present claim, in the first instance, and they made him put into it that he must chamfer the top. If, as we contend is shown in the present case, Guidet was entitled to the claim originally made by him and which is now the claim of the re-issue, he was not bound to chamfer the top of his blocks; and it is upon this ground that he applied for and obtained his re-issued patent.

Morey *vs.* Lockwood, 8 Wallace, 230.

Russell *vs.* Dodge, 3 Otto, 463.

IV.

COMPLAINANT'S PATENT IS NOT VOID FOR WANT OF NOVELTY.

As to the evidence of Mr. Stimpson, who is relied upon by the respondent to show the prior use of such a pavement as Guidet's in the city of Boston, it is unnecessary to do more than to refer to the testimony of J. Boyd Eliot, Record, pages 57 and 58, Q. 2 to 3. Mr. Elliott's testimony as to the true nature of the pavement that runs from Boston to Chelsea, is illustrated by three photographs, marked "Exhibits, Eliot, Stimpson testimony."

The alleged prior use of the patented pavement on Twenty-eighth street, in the city of New York, which was attempted to be proved by the testimony of Horace Leland, is shown by Eliot to have been simply a use of Belgian blocks, such as are described in the Guidet patent, the said pavement having none of the features of the patented one. (See Eliot's testimony, page 58, Q. 4 and 5, and the photograph exhibit, Leland's testimony.) Neither of the above alleged instances of prior use were relied upon by the respondent in the argument below; and besides the alleged use in the cities of Rochester and Buffalo, no attempt was made by the respondents to show the existence of such a pavement as Guidet's in any of the long list of cities mentioned in their answer, nor were any of the alleged prior publications and patents introduced and relied upon as anticipating Guidet.

As to the alleged prior use in South street, New York, testified to by William Mogk, the pavement in question is shown by the witnesses Dodge and Rollins (Record, pages 27 to 32), to have been the mere experimental use by Guidet, and only such a use as was absolutely necessary to ascertain and test the value and practicability of his invention. That such use will not invalidate complainant's letters patent was held in the following cases:—

Bump on Patents, 249.

Agawan Co. *vs.* Jordan, 7 Wallace, 583.

Sewall *vs.* Jones, 6 Fisher.

Nicholson *vs.* City of Elizabeth, 6 Fisher, 424.

Locomotive Company *vs.* Pennsylvania Railroad, 6 Official Gazette, 927.

A most strenuous effort, however, was made to show that a number of the streets in the cities of Rochester and Buffalo had been, prior to the invention of Guidet, paved in a manner substantially the same as that described and claimed by Guidet.

With respect to the Rochester pavement the respondent relied chiefly upon the testimony of George W. Beardsley, who dated back his experience over thirty years to a pavment laid in Basin alley, which pavement he declared to be the same as that existing at the time when this testimony was given. From this and other streets, instanced by Beardsley and the other witnesses produced by them, as having similar pavements to that described in the patent, the respondents did not bring a single sample of the pavement, as showing its character. They brought a model, a parallelopidon, trimmed on either side, and they asked their witnesses to swear that this model was a fair representation of the stones in Basin alley, and other streets, but they did not ask a single one of this long list of witnesses, examined in their behalf, to bring a sample of the actual stones laid down in Basin alley, or the other streets.

In reply to this testimony the complainant caused portions of the various streets referred to by respondents' witnesses to be taken up and brought into court.

The alleged prior use in the city of Buffalo, the respondent endeavored to prove in the same manner as that employed by it with respect to the city of Rochester; and in this case also the complainant followed them up, and meets the testimony of all their witnesses by the production of portions of the pavements themselves. The perfect fairness with which these samples of the pavement were selected can be seen from the testimony of Eliot (pages 60 to 66), in which testimony Mr. Eliot states how the samples were taken, and gives his reasons for stating, as he does, that his inspection of the pavements, and of the portions thereof removed, showed the same to be materially different from the pavement described in the patent. Photographs of these pavements were also produced by Eliot, and are in evidence in the case. (See also Record, pages 53–4) and the evidence of the following witnesses:—

Charles Billings	Page	36 - 43
Charles Piper	"	43 - 4
C. Jannijan	"	44 - 6
V. F. Whitman	"	47 - 8 & 52 - 4
George Geeb	"	49
Jacob Reiman	"	49 - 51
L. Wittrick	"	51
John Rumber	"	54 - 5
Wm. This	"	55

An inspection of the stones taken from these Rochester and Buffalo streets, and of the photographs of such streets introduced by Eliot, will convince the Court, as it did him, not only that these streets were not paved with the patented pavement, but that these stones were so entirely different in form from the blocks described by Guidet as to render it impossible to lay the pavement shown and described in the patent by their use; and, indeed, Martin Briggs, one of the principal witnesses for the defendant with respect to these pavements, testifies that the transverse joints between the stones were left more open than the joints formed by their ends *for the purpose of being filled in with sand*, and that the transverse joints were made by a sand-filling between the two surfaces of adjoining stones. (Record, page 19, Q. 14.)

V.

THE RE-ISSUED LETTERS PATENT TO GUIDET ARE INFRINGED BY THE RESPONDENT.

The infringement of the respondent was proved by the witness Eliot in his testimony with respect to Lafayette and Myrtle avenues in the city of Brooklyn, (see his testimony, pages 21 to 26), and by the specification of contract.

CLAIM OF GUIDET RE-ISSUED PATENT.	EXTRACT FROM "SPECIFICATION'S OF BROOKLYN CONTRACT.
"What I claim as new, and desire to secure by letters patent, is— "A pavement composed of stone blocks made in the form of parallelopipeds having their narrow edges or ends cut smooth, and their broadsides purposely cut rugged or uneven, when the blocks are arranged with their rugged surfaces transversely to the street, substantially as described."	J. A. S. "The paving blocks shall be set in courses of selected stone, of uniform width and depth across the street, breaking joints at least four inches, and with open joints across the street, and closed joints parallel with the street."

As your Honors will see, the specification under which these Brooklyn pavements were built calls for just such a pavement as that described and claimed in the patent, and the respondents do not deny that the blocks used in the construction of these pavements were parallelopipedons, that the open transverse joints and closed parallel joints specified in the contract, were obtained by the relative roughness of the broadsides of the stones, as compared with the narrow sides or ends. How they got their blocks into the required shape is explained by the respondents' witness John Booth (Record, 74), in the following language:—

> "Q. 22. How came these blocks to be rough or even?
>
> "A. Blocks are—have a tendency to have more projections on the broad sides, naturally, than they would have on the ends, on account of the paving-makers when they are trimming the blocks. Take a block, for example, four inches wide, eight or nine inches deep, and twelve inches long—the blocks are trimmed or finished off with a hammer, around all sides. In such a block the paving-makers or trimmers have to trim it in the one side four and a half inches from the edge if it is nine inches deep, and when he turns it up on the other side he has four, and a half inches that way to take it down.
>
> "Q. 23. Well, then, as I understand you, the comparative condition of the various surfaces of these stones, as to roughness or unevenness, is dependent upon the extent of this trimming?
>
> "A. I should say so.
>
> "(Objected to as leading.)
>
> "WITNESS:—I wish to add why the blocks would naturally come out cleaner on the ends than they would on the sides. Along the end of the block, when turned on its flat side, the paving cutter has only four inches of surface to knock off the projections, or spauls, and that is two inches to the centre, and the hammer is likely to knock off that spaul from a point beyond the centre. Turn over the block, and then there is only other two inches to knock off."

On this question of infringement we have besides the further testimony of Eliot (Record, pages 58 to 60, Q. 5), and the photographs of the Brooklyn streets taken by Mr. Eliot, and made exhibits in the case, and the further testimony of Fay and Mason (Record, 32 to 35).

Fay testifies as to the selection of the blocks as follows:—(Record, page 32).

"Q 2. What connection have you had with the laying of the pavement on Atlantic, Myrtle, and Lafayette Avenues, and on Henry street in the city of Brooklyn; I mean the pavements that were laid on those streets in the years 1873 or 1874?

"A. I was clerk and foreman on the dock for the contractor in 1873, on Myrtle avenue, and I was in the same position for Mr. Guidet in 1870 or 1871, on Atlantic avenue. I was clerk and foreman on the dock for the contractor who laid the pavement on Atlantic avenue, from Flatbush avenue to Classon avenue.

"Q 3. Confining your attention, then, to the pavement which was laid in 1873 or 1874, and which you have stated you were connected with, please state what your duties were in reference thereto?

"A. I was to see the stone discharged on the dock from the vessels; that they were counted, rejected, or accepted by the contractor. Those that were bad were culled out and put one side.

"Q. 4. In selecting these stones and culling those which were bad, what ones did you cull out; and state how you were guided in making your selection?

"(Any testimony upon the subject of infringement, or which tends to show in any particular the character of the infringement, is objected to, and defendant's counsel give notice that if any testimony of that character is taken he shall consider the case fully reopened for the defense.)

"A. I culled those that were too small, according to the specifications, those that were illy or badly formed, those not deep enough, and those with large projections on the ends. I was guided solely in doing this by my knowledge of how they ought to be put down on the streets, and seeing the pavement before, and the orders of the contractor, too.

"Q 5. Explain to me why you rejected those that had too large projections on the ends, and state, also, how the projections on the ends of the stones accepted compared with those on the sides?

"(Objection continued.)

"A. Simply that it prevented making a good joint on the ends, a large projection making too large a joint on the ends; and I also admitted those having a larger projection on the sides, because it was necessary to have a wider joint there.

"Q 6. Can you give me an idea of the number of stones which would be rejected at times, on account of bad shape, in a thousand, say?

"A. I objected, at times, to two or three per cent., five per cent., and ten per cent., and at one time I rejected two thousand blocks out of a lot of twelve thousand."

See also Mason's testimony, page 35, as follows:—

"Q 2. State what experience, if any, you have had in the laying of stone pavements?

"A. I was formerly employed by Mr. Guidet for five years or more. During that time I received the blocks and a part of the time superintended the laying of them.

"Q 3. Have you had occasion to observe the operation of laying the stone block pavement on Myrtle avenue, on Atlantic avenue from Bond to Henry street, and on Lafayette avenue, in the year 1873 or 1874, while the work was going on, and if so, how frequently?

"A. I did every day upon Myrtle and Lafayette avenues; on Atlantic street I couldn't say how often—say three weeks or a month.

"Q 4. Please state if you observed particularly how the blocks were laid with reference to the joints lengthwise to the streets, and also crosswise.

"A. I did; they were close-jointed on the ends, and open across the street.

"Q 5. How did they compare with the pavement in that respect with the pavement which you used to lay for Mr. Guidet?

"A. Precisely the same."

GEO. HARDING,
For Appellant.

Exhibit—Re-Issue, No. 4106.

UNITED STATES PATENT OFFICE.

Charles Guidet, of New York, N. Y., Improvement in Stone Pavement.

Specification forming part of Letters Patent No. 85,814, dated January 12th, 1869: re-issue No. 4106, dated August 23d, 1870.

To all whom it may concern:

Be it known that I, Charles Guidet, of the city, county, and State of New York, have invented a new and improved stone pavement, and I do hereby declare the following to be a full, clear, and exact description thereof, which will enable those skilled in the art to make and use the same, reference being had to the accompanying drawings forming part of this specification, in which drawings—

Figure 1 represents a longitudinal section of this invention. Figure 2 is a plan or top view thereof.

Similar letters indicate corresponding parts.

This invention relates to a pavement composed of stone blocks, which are made in the form of parallelopipeds, and the surfaces of which are so prepared that the blocks, when placed together, will form close joints in the direction parallel with the sides of the streets, or in a longitudinal direction, while the joints running transversely to the street remain open at the top, and thereby a pavement is obtained which offers a good foothold for the draft animals, and at the same time a smooth surface for the wheels passing over the same.

The edges of the blocks adjacent to the transverse open joints may be chamfered off, so as to insure a good foothold for the draft animals.

In the drawings, the letter A designates a section of my pavement, which is composed of a series of stone blocks, B. These blocks are cut in the form of parallelopids, and they are so prepared that the same, when put down on the street, will form close joints in a longitudinal direction, or parallel with the sides of the street, and open joints in a direction transversely to the street. To effect this purpose, the narrow ends *a* of my blocks are cut smooth, so that the joints between adjoining blocks are close, and the broad sides or surfaces *b* of my blocks are left rugged, or cut so that the joints between adjoining blocks will be open. The top edges *c* of these broad sides may be chamfered off, as shown in the drawings.

If a street is paved with truncated pyramids, as used in the Russ or Belgian pavement, close joints are formed on the top surface of the pavement both in a longitudinal and in a transverse direction, and said surface effers no foothold to the draft animals passing over the same; but, by placing a series of my blocks B together, as shown in Fig. 2, close joints are formed in a longitudinal direction, and open joints in a transverse direction, and a stone pavement is obtained which offers a firm foothold to the draft animals, while it presents a comparatively smooth surface to the wheels of vehicles passing over it, and at the same time each block is firmly retained in position by the adjoining blocks, without requiring any intermediate layers of stone or other material.

The interstices between the rugged surfaces of the blocks are filled with sand, whereby the firmness and solidity of the pavement are still further increased.

I am aware that pavements have been produced of blocks made in the form of parallelopipeds; but, in order to produce open transverse joints, it was found necessary to interpose between the adjoining blocks thin strips of wood or stone.

I do not claim broadly, therefore, a pavement composed of blocks made in the form of parallelopipeds; but

What I claim as new, and desire to secure by letters patent, is—

A pavement composed of stone blocks made in the form of parallelopipeds, having their narrow edges or ends cut smooth, and their broad sides purposely cut rugged or uneven, when the blocks are arranged with their rugged surfaces transversely to the street, substantially as described.

CHARLES GUIDET.

Witnesses:
W. Hauff,
C. Wahlers.

UNITED STATES SUPREME COURT.

No. 231.

CHARLES GUIDET,
Appellant,
vs.
THE CITY OF BROOKLYN,
Appellee.

BRIEF FOR APPELLEE.

GEORGE GIFFORD,
WM. C. DE WITT,
For Appellee.

BURGOYNE, Law Case Printer, (Law Telephone 587), 29 Rose Street, N. Y.

United States Supreme Court.

CHARLES GUIDET,
Appellant,

vs.

THE CITY OF BROOKLYN,
Appellee.

Statement.

It was insisted on the argument in the Court below, as it will be here, among other things, that the reissue patent on which this suit was brought was invalid on account of its not being for patentable subject matter, obscurity of description, variance between it and what was described as the invention in the original patent, want of novelty, and no infringement.

But the proof of want of novelty in the thing patented was so overwhelming and unanswered and unanswerable that the Court deemed the defense of the want of novelty sufficient, and decided the case on that defense alone, holding that the proof of the prior use of the pavements in the cities of Rochester and Buffalo contained the substance and principle of the pavement laid down by the defendant and alleged to infringe the reissue patent.

As your Honors, like the Court below may deem it unnecessary to look further than at the testimony of want of novelty, that part of the defense will be first submitted. But before referring to the testimony of prior use your attention will be briefly called to the contents of the patent.

The claim of the reissue reads thus:

> "What I claim as new, and desire to secure by Letters Patent, is a pavement composed of stone blocks made in the form of parallelopipeds, having their narrow edges or ends cut smooth and their broad sides purposely cut rugged or uneven when the blocks are arranged with their rugged surfaces transversely to the street, substantially as described."

If the language of the patent could be complied with, the structure claimed would possess the following antagonistic peculiarities:

1. The stones must be "in the form of parallelopipeds."
2. The sides of the stones must be rugged or uneven.

Here are two requirements inconsistent with each other. The stones, according to the specification, *must* be in the form of parallelopipeds, and yet the sides of the stones must be rugged or uneven—that is, the sides of the stones must be of such configuration as to prevent the stones being in the form of parallelopipeds.

A parallelopiped is an exact mathematical figure and does not admit of being uneven on the sides. A good definition of a parallelopiped is the following:

> "A parallelopiped is a solid figure bounded by six faces, each two opposite faces parallel to each other."

Now if the sides of the block are rugged or uneven, as the claim says they *must be*, they are not and cannot be parallel to each other. Another very good and brief definition of a parallelopiped is the following:

> "A solid comprehended under six parallelograms."

The specification of this reissue patent abounds in absurdities, contradictions and obscurities, which were obviously intended to deceive the public. The subject matter of the alleged invention is too simple to justify or excuse contradictions or obscurities in the description of it. The alleged invention consisted simply of taking square stones as large at the bottom as at the top; and placing them on the ground so that the cracks between their ends were not as wide as the cracks between their sides. A plain and direct statement of this subject matter was easy; but such a statement would have illustrated that there was no invention in it, and that result the patentee wished to avoid. The author of the specification foresaw that a direct and concise explanation of the alleged invention would show the subject matter to be clearly unpatentable. Therefore, to carry out the object and to give the subject matter a false appearance, it was necessary to make unplain, by language, what was plain in fact, and to clothe the alleged invention with phraseology, which, to the cursory reader, would give it the aspect of being the product of inventive genius. Such a device, to deceive the public, and cause a patent to pass for more than it is worth, was no novelty among patentees and their patent agents. It is no uncommon thing for patent agents, where the invention to be patented is too simple and obvious to constitute patentable subject matter, to disguise the real character of the alleged invention, and give it the appearance of patentability by the use of high sounding scientific terms, and prolix language. They adopt the adage that to those who do not look below the surface, the feathers characterize the bird; the object being to deceive the public as to what is the real character of the invention. This kind of deception the patent law does not tolerate, and it will not uphold any patent justly chargeable with such a defect. Although the law looks with much lenity upon an honest mistake on the part of a patentee, it looks with great sternness and exaction upon any attempt to deceive the public.

Why was the term "parallelopiped" used in the claim of the patent when the words next following the use of that term are inconsistent with it, and describe a stone which is *not* a parallelopiped? Why was the name of that mathemetical figure used, when probably not a single stone has ever been laid, or even made by Guidet, or any one else working under his patent, in that form, and when in following the words of the claim no such stone *can be made*? It was undoubtedly done in an attempt by mere words to give the subject-matter of the patent the appearance of novelty and importance which it does not possess, and by the erroneous use of the name of a mathematical figure, to make it appear as if invention was needed to produce it. Such was not an honest or justifiable motive. The truth can generally be told in a few plain words; it is deception that requires such circumlocution and misuse of terms.

POINTS.

I.

The reissue patent on which this suit is brought is void for want of novelty.

The pavement in extensive use in the cities of Rochester and Buffalo long before the time of the alleged invention of Guidet was substantially the same as that attempted to be described in and patented by his said reissue patent.

All that can be covered by this patent, under any construction possible to put upon it, is that it is for a pavement made of stones of *substantially the general form of parallelopipeds*, having the end joints *relatively close*, and the side joints relatively open, for the purposes specified in the patent. Now, all of these conditions were exactly fulfilled by the Rochester and Buffalo pavement. Those pavements had the end joints of the stones relatively as close, and the side joints relatively as open, and for the same purposes as is specified in the patent, and as much so as any pavement which the proofs show was ever laid down in the City of Brooklyn.

That is the meaning of the patent, and that is the construction given to it by Mr. Guidet himself, through his expert, Eliot, when they compared it with the Brooklyn pavement in their effort to prove infringement, and that is the *only kind of pavement which is claimed to be an infringement in this case.* Such is fully proved by the cross-examination of appellant's own expert, Mr. Eliot, as appears at pages 23 and 24, folios 44 to 46, of his deposition, and particularly at questions 15 and 20.

FIRST.

The stones of the Rochester and Buffalo pavements were as nearly in forms of parallelopipeds as is claimed for the patented pavement, or as any pavement which was ever used by the appellee.

This is testified to by the following witnesses:

Gilbert Brady	p. 91, q. 9, 10, 11; p. 92, q. 34
James Blakely	p. 94, q. 8, 9
John McConnell	p. 96, q. 11; p. 97, q. 16
Michael Callaghan	p. 100, q. 8, 9, 10, 11. 12
Matthias Thies	p. 102, q. 6, 7
Wm. Burgess	p. 103, q. 8, 9, 10
Benj. Butler	p. 105, q. 8, 9, 10, 11
Lewis Seelye	p. 121, q. 11. 12, 13; p. 122, q. 17
W. A. Grantsynn	p. 169, q. 17; p. 110, q. 29
John Rauber I	p. 113, q. 6. 7, 8; p. 114, q. 11, 12
Geo. W. Maltby	p. 110, q. 6, 7
M. Normington	p. 115, q. 3, 4; p. 116, q. 7
Wm. Vicinus	p. 117, q. 6, 7, 8
Martin Briggs	p. 119, q. 17, 19, 20, 21
H. S. Hebard	p. 124, q. 9; p. 125, q. 10, 11
Jacob Reimer	p. 127. q. 6, 7, 8
John Frei	p. 128, q. 5, 6, 7
John Love	p. 131, q. 10, 11. 12, 13

Geo. E. Mann	p. 133, q. 10; p. 134, q. 15, 16, 17
C. H. Rathbun	p. 138, q. 9
Albert Krouse	p. 139, q. 7, 8
Alex. Brush	p. 149, q. 6, 7
Geo. B. Allen	p. 141, q. 11, 12
Isaac Holloway	p. 148, q. 15, 16, 17, 18

SECOND.

The ends of the stones of the Rochester and Buffalo pavements were relatively as smooth as is claimed for the ends of the stones of appellant's pavement, or as any stones used by the appellee.

This is proved by the following testimony in the record:

Gilbert Brady	p. 91, q. 20; p. 92, q. 22
James Blakely	p. 94, q. 11, p. 95, 22
John McConnell	pp. 96, 97, q. 13, 22, 23, 24, 25
Michael Callaghan	p. 100, q. 13, 18
Matthias Thies	p. 102, q. 8, 9, 14
Wm. Burgess	p. 103, q. 13, 14
Benj. Butler	p. 105, q. 12, 13
W. A. Grantsynn	p. 109, q. 19
Geo. W. Maltby	p. 111, q. 11, 12
John Rauber	p. 114, q. 13, 14, 15
Mark Normington	p. 115, q. 5
Wm. Vicinus	p. 117, q. 11
Martin Briggs	p. 118, q. 11
Lewis Seelye	p. 121, q. 14
Cyrus Beardsley	p. 123, q. 7
Henry S. Hebard	p. 125, q. 12, 13
Jacob Reimer	p. 127, q. 9, 10, 17
John Frei	p. 128, q. 11; p. 129, q. 12, 13, 14, 15
Michael Klein	p. 130, q. 6, 7
John Love	pp. 131, 132, q. 18, 21, 22
Geo. E. Mann	p. 133, q. 11; p. 134, q. 13
James Clark	p. 135, q. 5
Nicholas Kurtz	p. 135, q. 6, 9, 13
C. H. Rathbun	p. 137, q. 10, 11
Albert Krouse	p. 139, q. 9
George B. Allen	p. 141, q. 13

Geo. Bomberge	p. 142, q. 12
Patrick Smith	p. 143, q. 8, 9*a*
Alex. Brush	p. 145, q. 8
Isaac Holloway	p. 148, q. 20
Geo. W. Beardslee	pp. 154-5-6, q. 5, 6

THIRD.

The sides of the stones of the Rochester and the Buffalo pavement were relatively as rugged or uneven as is claimed for the patented pavement, or as contained in any pavement used by the appellee and were *purposely* left or made so.

This is proved by the following testimony in the record:

Gilbert Brady	p. 91, q. 20; p. 92, q. 22
James Blakely	p. 94, q. 11, 12
John McConnell	pp. 96,97, q. 13,14,15,21,22,23,24,25
Michael Callaghan	p. 100, q. 13, 18
Matthias Thies	p. 102, q. 8, 9, 14
Wm. Burgess	p. 103, q. 13, 14
Benj. Butler	p. 105, q. 12, 13
Wm. A. Grantsynn	p. 109, q. 19
Geo. W. Maltby	p 111, q. 11
John Rauber	p. 114, q. 13, 14, 15
Mark Normington	p. 115, q. 5
Wm. Vicinus	p. 117, q. 11
Martin Briggs	p. 118, q. 11; p. 119, q. 12, 13
Lewis Seelye	p. 121, q. 14, 16
Cyrus Beardsley	p. 123, q. 7
Henry S. Hebard	p. 125, q. 12, 13
Jacob Reimer	p. 127, q. 9, 10, 17
John Frei	p. 128, q. 11; p. 129, q. 12, 13, 14, 15
Michael Klein	p. 130, q. 6. 7
John Love	p. 131 and 132, q. 18, 19, 20, 21, 22
Geo. E. Mann	p. 133, q. 11
James Clark	p. 135, q. 5
Nicholas Kurtz	p. 135, q. 6, 9, 13
Chas. H. Rathbun	p. 137, q. 10, 11
Albert Krouse	p. 139, q. 9
Geo. B. Allen	p. 141, q. 13

Geo. Bomberge	p. 142, q. 12
Patrick Smith	p. 143, q. 8
Alex. Brush	p. 145, q. 8
Isaac Holloway	p. 148, q. 20
Geo. W. Beardslee	pp. 154–5–6, q. 5, 6

FOURTH.

The joints of the Rochester and the Buffalo pavement, running parallel with the direction of the streets were, relatively, as close, to prevent the wearing of ruts, as is claimed for the patented pavement, or as was ever used by the appellee. This is proved by the following testimony in the record:

Gilbert Brady	pp. 91, 92, q. 16 to 27, both inclusive.
James Blakely,	p. 94, q. 13, 14, 15
John McConnel.	p. 97, 98, q. 24, 25, 30, 32
Michael Callaghan	p. 100, q. 14, 16, 17
Matthias Thies	p. 102, q. 15, 16, 17, 18
Wm. Burgess	p. 104, q. 19
Benj. Butler	pp. 105, 106, q. 14, 19
W. A. Grantsynn	p. 109, q. 18, 20, 21, 28
Geo. W. Maltby	p. 111, q. 10, 13, 14
John Rauber	p. 114, q. 17, 18, 19, 20
Mark Normington,	pp. 115–16, q. 6, 8
Wm. Vicinus,	p. 117, q. 12, 13, 14, 15
Martin Briggs,	p. 119, q. 12, 13, 14
Lewis Seelye,	p. 121, q. 15, 16
Cyrus Beardsley,	p. 123, q. 8
Henry S. Hebard,	p. 125, q. 15, 16
John Frei,	p. 129, q. 16, 17, 18, 19
Michael Klein,	p. 130, q. 10, 11
John Love,	p. 132, q. 23, 24
Geo. E. Mann,	p. 134, q. 13
Nicholas Kurtz,	p. 135, q. 8, 10, 11
Christian Zimmerman,	p. 136, q. 8, 9, 10, 11
Chas. Rathbun,	p. 138, q. 13, 14
Albert Krouse,	p. 139, q. 10, 11, 12
Geo. B. Allen,	p. 141, q. 14, 15, 16
Geo. Bomberge,	p. 142, q. 13, 14, 16
Alex. Brush,	p. 145, q. 9, 11

Isaac Halloway,	p. 148, q. 21, 23, 24
John A. Ditto,	p. 146, q. 9
Geo. W. Beardslee,	pp. 154–55–56, q. 5, 7

FIFTH.

The joints of the Rochester and the Buffalo pavements running transversely to the street, were, relatively, as open to furnish foothold for draught animals as is claimed for the patented pavement, or as was ever used by the appellee. This is proved by the following testimony in the record :

Gilbert Brady,	pp. 91–92 q. 16, 17, 18, 19, 20, 22 23, 24, 25, 26, 27
James Blakely,	p. 94, q. 13, 14, 15
John McConnell,	p. 97–98, q. 24, 25, 30, 32
Michael Callaghan,	p. 100, q. 14, 16, 17
Matthias Thies,	p. 102, q. 15, 16, 17, 18
Wm. Burgess,	pp. 103–4, q. 15, 16, 18
Benj. Butler,	pp. 105–6, q. 13, 19
Wm. A. Grantsynn,	p. 109, q. 18, 20, 21
G. W. Maltby,	p. 111, q. 10, 13, 14
John Rauber,	p. 114, q. 17, 18, 19, 20
M. Normington,	p 115–16, q. 6, 8
Wm. Vicinus,	p. 117, q. 12, 14
Martin Briggs,	p. 119, q. 12, 13, 14
Lewis Seelye,	p. 121, q. 15, 16
Cyrus Beardsley,	p. 123, q. 8
Henry S. Hebard,	p. 125, q. 15, 16
John Frei,	p. 129, q. 16, 17, 18, 19
Michael Klein,	p. 130, q. 10, 11
John Love,	p. 132, q. 23, 24
Geo. E. Mann,	pp. 133–34, q. 11, 13
Nicholas Kurtz,	p. 135, q. 8, 10, 11
C. Zimmerman,	p. 136, q. 8, 9, 10, 11
Chas. H. Rathbun,	p. 138, q. 13, 14
Albert Krouse,	p. 139, q. 10, 11, 12
Geo. B. Allen,	p. 141, q. 14, 15
Geo. Bomberge,	p. 142, q. 13, 14, 16
Alex. Brush,	p. 145, q. 11
Isaac Holloway,	p. 148, q. 21, 23, 24

John Ditto	p. 146, q. 9
Geo. W. Beardslee,	pp. 154–55–56, q. 5

SIXTH.

It was the practice in Rochester and Buffalo for foremen and superintendents of paving to instruct the pavers to so lay the stones as to form open side joints transverse the streets, and so as to form close end joints in line with the streets. This is proved by the following testimony in the record :

Wm. Burgess	pp. 103–4, q. 15 to 20
Jacob Reimer	p. 127, q. 14, 15, 16
James Clark	p. 135, q. 5
Nicholas Kurtz	p. 135, q. 7
Christian Zimmerman	pp. 136–37, q. 12, 13
Patrick Smith	pp. 143–44, q. 9*a*, 9*b*
Alex. Brush	p. 145, q. 9, 10
G. W. Maltby	p. 111, q. 12

The following witnesses, in the record, testify that if the Guidet specification were handed to them, with direction to lay a pavement as nearly in accordance with it as they could, they would lay just such a pavement as was laid in Rochester by the use of the Medina blocks :

Gilbert Brady, stone dealer and street contractor	p. 93, q. 38
J. McConnell, street and sewer contractor	p. 98, q. 34
Benj. Butler, street superintendent.	p. 106, q. 23
W. T. Grantsynn, city surveyor and engineer	p. 109, q. 25
Geo. W. Maltby, stone dealer, street superintendent and contractor	p. 111, q. 25
John Rauber, street contractor	p. 115, q. 24
M. Normington, stone dealer, contractor and paver.	p. 116, q. 12
Wm. Vicinus, contractor and superintendent of paving.	p. 117, q. 19

M. Briggs, Commissioner of Public Works	p. 120, q. 26
Lewis Seelye, Chairman of Rochester street Committee and ex-member of Congress	p. 122, q. 20
H. T. Hebard, Member of Rochester Improvement Committee and of Board of Public Works	p. 126, q. 24

The following witnesses, in the record, testify that if the Guidet specification were handed to them, with direction to lay a pavement as nearly in accordance with it as they could, they would lay just such a pavement as was laid in Buffalo by the use of the Medina blocks:

John Love, foreman of street paving	p. 132, q. 32 to 35
G. E. Mann, City Engineer of Buffalo	p. 134, q, 22
C. H. Rathbun, dealer in stone and street contractor	p. 138, q. 16*b*
A. Krouse, engineer and superintendent of paving	pp. 139–40, q. 15–16
Geo. B. Allen, contractor and paver	p. 141, q. 19
G. Bomberge, surveyor	p. 143, q. 21
P. Smith, street commissioner	p. 144, q. 11
A. Brush, " "	p. 145, q. 14–15
I. Holloway, pavement contractor	p. 149, q. 37

The following pavers, in the record, testify that the instruction given by and to them in laying the old pavement was to leave the transverse joints open, and make the longitudinal joints close:

Gilbert Brady	p. 92, q. 32, 36
James Blakely	p. 94, q. 13, p. 95, q. 24
M. Callaghan	p. 101, q. 24
Wm. Burgess	p. 103, q. 15, 20
Jacob Reimer	p. 127, q. 14, 15
M. Klein	p. 130, q. 10, 13
John Love	pp. 131–32, q. 18 to 23

After such instruction was publicly given and understood to have been acted upon, why was not that alone sufficient to show that what was so directed to be done was a matter of common knowledge? How could it be said that that remained to be discovered which workmen had been repeatedly directed to do with a full understanding of the object and utility of having it done? This piece of testimony alone would be sufficient to invalidate the patent under consideration.

We come, now, to the consideration of the testimony put in on the part of the appellant to contradict appellee's testimony respecting the Rochester and Buffalo pavements. And strange to say not a man is called as a witness who possessed knowledge of how those pavements were laid, or what was their condition when laid. Out of the hundreds who helped to lay them and saw them thus laid, and the thousands who used them and were familiar with them after laid, not one is called on the part of the patentee to tell us how they were laid. Mr. Guidet has preferred to employ a professional expert to prepare some of the old stones and depend upon his opinion instead of the facts.

The Guidet patent purports to be for a pavement possessing certain properties, and not for the materials composing the pavement. Any peculiarity specified in the material is merely to contribute towards the properties which the pavement is to contain after it is laid in the street.

The properties, as far as the patent defines any which characterize the pavement, are:

1st. Stones bounded by six faces, each two opposite faces being parallel to each other.

2d. The width of the joints running transversely to the street are comparatively wide.

3d. The width of the joints running longitudinally to the street are comparatively narrow.

On the part of the appellee, twenty-two witnesses testify that the Rochester and Buffalo pavements consisted of stones which were substantially as thick and as long on the bottom as on the top, and substantially as wide and as long on one side as on the other, and substantially as wide and as thick on one end as on the other, thus bringing them as nearly to the form of parallelopipeds as the stones in the alleged infringing pavement are proved to be or claimed to be. This testimony is referred to under the first subdivision of Point I. of this brief.

On the part of the appellee, twenty-nine witnesses testify that the joints running longitudinally with the line of the streets are substantially close when compared with the transverse joints. This testimony is referred to under the fourth subdivision of Point I. of this brief.

On the part of the appellee, twenty-nine witnesses testify that in the Rochester and Buffalo pavements, the joints formed by the sides of the stones and running transversely to the line of the streets are substantially open when compared with the longitudinal joints. This testimony is referred to under the fifth subdivision of Point I. of this brief.

Among those witnesses as to the Rochester and Buffalo pavements, produced on the part of the appellee, are the officers, from the Mayor down, who acted for the cities in procuring the pavements to be laid; the contractors who took the jobs to lay them, the foreman who superintended the laying of them and gave directions how they were to be laid, and the pavers who actually laid them.

Among those witnesses is George W. Beardslee, whose knowledge embraces the characteristics of the Rochester pavement from the time the first stone pavement was laid there to within a few years. Mr. Beardslee testified that he was brought up to work in a quarry which his father owned; that he had definite knowledge of the condition of the stone pavement of that city; that he had been engaged in building and architecture, and that between 1830 and 1850 he designed and drew specifications for about 1,000 structures of various kinds, many of them requiring stones from various quarries, from Medina, Lockport, Syracuse, Auburn and Rochester. That he was familiar with the first stone pavement put down in the city of Rochester, which was done by a man named Silas O. Smith, and which was of square blocks. That at the time Smith was laying the pavement witness inquired of him what advantage such stones would have over cobble stones, and Smith stated that owing to the roughness of the sides the joints across the street would be open and afford a foothold for horses going up the street, while the joints in line with the street would be close and prevent wheels wearing ruts into the pavement.

At folio 295 he says that after this pavement was completed he saw heavy loads taken up the street by horses, and noticed the foothold which the pavement afforded them, and saw that the advantages claimed by Smith of such a pavement were realized.

He further testifies (folio 294) that he saw the stones of the Brooklyn pavement from time to time while they were being put down, and that they had the same characteristics in regard to joints, both transverse and longitudinal, and shape of blocks, with rough sides and comparatively smooth ends as the Rochester pavement.

What, now, is the testimony put in on the part of appellant to contradict or modify this large mass of evidence taken on the part of the appellee, or to show that this large number of witnesses of the appellee do not correctly represent the form of the stones of which the pavements are composed, and the relative width of both the longitudinal and transverse joints? Is there any witness on the part of appellant who directly denies the truth of this testimony as matter of fact? Is there any witness on the part of the appellant who says that such is not the relative width of the joints and the form of the stones in the Rochester and Buffalo pavements? To these questions the record answers, none. There is no witness who says that the transverse joints are not wider than the longitudinal joints. Even Mr. Eliot, though liberally paid for preparing his testimony, and on which he was engaged four weeks, dared not say that. He evades the question on that subject, and instead of answering it categorically, substituted for an answer an expert device in the nature of an argument, which, however, is so transparent that its animus may be seen through it.

What, then, did the appellant invoke to shield him from this mass of proof of facts? It was this, he or some one in his behalf conceived the idea that some of the stones of those old pavements might be taken up and some of them selected therefrom and taken to the place of trial, which perhaps, by the assistance and manipulations of a professional expert, the Court might be induced to believe that those Rochester and Buffalo pavements did not have joints more open between the sides of the stones than at their ends and did not have closer joints between the ends of the stones than they had between their sides, and that the sides of the stones were not more rugged and uneven than their ends.

In execution of this expedient, Mr. Eliot, a very adroit and skillful expert, was employed, and he proceeded with men at his command to take charge of the job and to have some of the old pavement stones taken up from the streets and sent to the Court, and (fol. 114) after he had taken up some stones from a street in Rochester called "Basin Alley," and put them in evidence, in a hand barrow, he was asked this question respecting them:

> "Q. 8. Does the said pavement correspond or differ from the pavement described in the reissued letters patent to Charles Guidet, and give your reasons for any opinion you may express?"

To which he answered:

> "In my *opinion* a pavement formed of the blocks of stone which I obtained from Basin Alley does differ essentially from the pave-

> ment described in the Guidet patent for the reason that those blocks of stone taken from the Basin Alley are not generally of any regular shape of any kind, but are simply broke in fragments or layers of stones as taken from the quarry, and generally smoother on the sides than on the ends. In the barrow marked 'Exhibit Basin Alley,' I have placed a number of the best samples of the stones which I was able to procure from said alley, with their top surfaces, or that which was their top surface when in the pavement, so as to rest upon the bottom of the box or barrow, and in such position as is easily seen how the under side of such a pavement would look, and what kind of end joints would be formed between the stones, as compared with the side joints."

He then adds:

> "I obtained the best specimens I could find, and I do not find a single sample or stone which is shaped as the stones are required to be in order to form a pavement like those described in the Guidet patent. The ends of the stones are not in proper shape to form tight joints in the line of travel, and the sides are generally smoother than the ends. In fact I found this to be the general rule also with all the pavements formed of the Medina sand stones both in the cities of Rochester and Buffalo."

Now here was a professional expert employed for the special purpose of preparing testimony on which he says he was occupied four weeks, to prove that the Rochester and Buffalo pavements did not have joints at the sides of the stones more open than the joints at their ends, to contradict the numerous witnesses who had testified that those pavements were so laid, and he did not say that the pavement were not so laid, or that that was not their condition when he saw them; instead thereof, he contrives the device of taking up some of the stones, fixing them to his own notion and then giving his *opinion* as to whether or not those identical stones would make such joints. In addition to the suspicion which this contrivance bears on its face, is the fact that the stones taken up were not after taken up in the condition that they were when laid down and in use. Even the men who took them up under the superintendence of the expert were compelled, on cross-examination, to admit that the tools by which they were taken up were such as to mar and break them, and render them unfit to be again relaid. Mr. Billings, one of the expert's men, who took the stones up, at folio 75, testifies thus:

> "x-Q. 43. What tool did you use?"
>
> "A. A crow-bar, and a pick to pull it up."
>
> "x-Q. 44. Were those the only tools in the whole operation of moving the square yard in Basin Alley?"
>
> "A. That is all, except a shovel to throw out the chips that came off the stones."
>
> "x-Q. 45. What do you mean by chips that came off the stones? Came off by reason of what?"
>
> "A. The stones seemed to be so brittle, must have broken off when they were struck by the bar and pick."
>
> "x-Q. 46. What was done with those chips or pieces that were broken off?"
>
> "A. They were put in a pile with other rubbish that came off the pavement."

The following testimony of this witness shows that the stones were so broken and altered by taking them up that they were not in the condition they were when laid down and when they formed a part of the pavement testified about by appellee's witnesses. Mr. Billings, on his cross-examination, folio 78, testifies thus in reference to the stones taken up:

> "x-Q. 68. Could you repave the stones con-

> tained in the barrel marked 'Basin Alley Stone,' provided you had the stone which were rejected because the barrel would not hold them in the position they were before?"
>
> "A. I don't think I could, sir; because there were some that were thrown with the chips that got broken in taking them out."
>
> "x-Q. 69. Could you repave either of the other square yards or so, about which you have testified, and if yea, which one?"
>
> "A. I don't believe I could; there is always a loss by breaking up pavements, they chip more or less off, sometimes break up in pieces."
>
> "x-Q. 70. What was done with the chips and broken pieces of each of the other square yards removed?"
>
> "A. Put them to one side, because they were unfit for use."

Even the appellant's expert, Eliot, to the direct question put to him, could not and dare not say that the pavements as they were lying in the streets of Rochester and Buffalo did not correspond with the pavement described in the Guidet reissue. The following direct question was put to him. Q. 10, folio 117.

> "Do these pavements in Rochester and Buffalo correspond or differ from the pavement described and claimed in the Guidet reissued patent, and give your reasons for any opinions you may express?"

This question he did not answer directly, but evades it and says that he does not regard it possible to form a pavement substantially like that described in the Guidet patent with such stones as are used in Rochester and Buffalo, and gives as his reason that as he understands the patent, it requires that the stones shall be in the form of paralelopipeds with the ends cut smooth and the sides left uneven to form open joints transversely with the street. His answer to this 10th question is the following, folio 117 :

> "As already stated by me in previous answers in this case, I do not regard it possible to form a pavement substantially like that described and claimed in the Guidet patent with such stones as are used in Rochester and Buffalo, and for the following reasons: As I understand said patent, it requires that the blocks of stones shall be in the form of a parallelopiped, the ends of which must be cut smooth so as to form tight joints in the lines of travel on the street, and the sides must be left rugged or uneven, or purposely cut so, so that the stones when placed against each other will form open joints transversely with the street."

Now that 10th question and answer show unmistakably the position of Eliot. He dared not say that those Rochester and Buffalo pavements differed from the pavement described and claimed in the Guidet reissue patent, without first construing the patent to be limited to stones in the form of parallelopipeds, with the joints at their ends tight and their sides so uneven as to form open joints which as already shown is an exaction involving an inconsistency and an impossibility, and is neither the meaning of the Guidet patent nor the condition of the Brooklyn pavement, claimed to be an infringement of it.

This question and answer amounts to an admission of the expert, Eliot, that the Rochester and Buffalo pavements did correspond with the pavement described and claimed in the Guidet patent, when the patent is construed, as it must be, to make the Brooklyn pavement an infringement, and as it must be to prevent its involving an inconsistency.

Mr. Eliot endeavored, argumentatively, to insinuate that the ends of the stones were not in proper shape to form tight joints. This he did at folios 115 and 117 of the record, and this was as far as he dared to go. He could select some stones and then say that he did not consider the ends of them to be in proper shape to make close joints, leaving it unexplained as to what he meant by *proper* joints. This was not stating a fact, so that the error of his statement could be exposed.

It is obvious that if it should be proved that the Rochester pavement does correspond exactly with the pavement which is charged to be an infringement of the Guidet patent, and with the pavements laid by Guidet himself under his patent, having longitudinal joints relatively close, and the transverse joints relatively open, and that Mr. Eliot well knew those facts at the time he testified he could not be convicted of perjury, because his answer did not amount to a positive denial of those facts. On the contrary, he substituted for a direct answer a device partaking far more of the ingenuity and equivocation of an expert than of honesty. He could select such stones as would best answer his purpose, and then give an expert opinion, respecting them without the risk of the exposure to which he would have been subjected if he had denied that the appellee's witnesses were correct when they stated what was the relative width of the joints of those pavements. This evasion he did adopt, avoiding saying that the transverse joints were not wide enough for a hold for the feet of draught animals, or that the longitudinal joints were not close enough to prevent the wear of ruts, or that the transverse joints were not relatively wide and the longitudinal joints relatively narrow, although the questions respecting the relation, size and character of these joints were the most important, if not the only important questions to be determined respecting the identity of the Rochester and Buffalo pavements with the patented pavement. Notwithstanding the pertinency and importance of these questions Mr. Eliot studiously avoided giving a direct answer to any of them. The reason is obvious; it was because he knew that if he said anything about the actual existence of those joints in the Rochester and Buffalo pavements as they were then lying in those cities, he would not dare to contradict the appellee's witnesses respecting them, as the pavements just as they were laid, were still in existence and their surfaces were visible, and the condition of them could be easily proved by as many hundred witnesses as the appellee might see fit to call. If the surface of those pavements was not in the condition as testified to by the appellee's witnesses, why did not the appellant have several competent, disinterested men to look at them, and testify to the fact instead of hiring an expert to substitute ingenious devices and inferences instead of the facts? There lie the pavements in broad daylight, subject to the inspection of any number of competent persons. Why should Mr. Eliot or any one else be employed to rip up and break the stones of part of that old pavement, and then to say that he did not think that the ends of those stones were in the *proper form* to make close joints, so long as the joints were as close as the patent required?

But this equivocation and attempt at deception are not all that stands against the credibility of Mr. Eliot's testimony. Although he did not dare to deny the correctness of appellee's testimony as to the character of the joints in the pavements as they were lying exposed to public view in the cities of Rochester and Buffalo, when he came to the configuration of the ends and sides of the stones which he and those employed by him had selected, broken, and manipulated, he became bolder because of being under the impression that he was less exposed to contradiction, and made statements and representations so entirely groundless and destitute of truth as to completely destroy the credibility of his entire testimony.

His deposition at folio 117 contains the following statement in reference to the Rochester and Buffalo pavements:

> "The ends of the stones are not in the proper shape to form tight joints in the line of travel, and the sides are generally smoother than the ends. In fact, I found this to be the general rule also with all pavements formed of the Medina sandstone, both in the cities of Rochester and Buffalo."

If this statement of Mr. Eliot does not amount to a statement that such was the condition of the stones in the Rochester and Buffalo pavements, then it amounts to only a dishonest and deceptive insinuation. If, on the contrary, it amounts to a statement that the ends of the stones, of which those pavements were composed, are not generally as smooth as the sides of them, then the statement is absolutely untrue, and its destitution of truth is proved by the testimony of at least thirty two disinterested witnesses who had the best opportunity of knowing the facts as well as by many circumstances.

The following witnesses all testify that the stones of those pavements were smoother on the ends than on the sides, and therefore, directly contradict the truth of Mr. Eliot's statement:

Gilbert Brady, in the record	p. 91, q. 20; p. 92, q. 22
James Blakely	p. 94, q. 11, 12
John McConnell	pp. 96, 97, q. 13, 22
Michael Callaghan	p. 100, q. 13, 18
Matthias Thies	p. 102, q. 8, 9, 14
William Burgess	p. 103, q. 13, 14
Benj. Butler	p. 105, q. 12, 13
W. A. Grantsynn	p. 109, q. 19
Geo. W. Maltby	p. 111, q. 11, 12
John Rauber	p. 114, q. 13, 14, 15
Mark Normington	p. 115, q. 5, 6
Wm. Vicinus	p. 117, q. 11, 12
Martin Briggs	pp. 118-19, q. 11, 12
Lewis Seelye	p. 121, q. 14
Cyrus Beardsley	p. 123, q. 7

Henry S. Hebard	p. 125, q. 13, 15
Jacob Reimer	p. 127, q. 9, 10, 17
John Frei	pp. 128-29, q. 11, 12, 13, 14, 15
Michael Klein	p. 130, q. 6, 7
John Love	pp. 131-32, q. 18, 21, 22
Geo. E. Mann	pp. 133-34, q. 11, 13, 14
James Clark	p. 135, q. 5, 6
Nicholas Kurtz	p. 135, q. 6, 9, 13
Christian Zimmerman	p. 136, q. 6, 7, 8
Chas. H. Rathbun	p. 138, q. 10, 11
Albert Krouse	p. 139, q. 9, 10
George B. Allen	p. 141, q. 13
Geo. Bomberge	p 142, q. 12, 13
Patrick Smith	pp. 143-44, q. 8, 9*a*, 9*b*
Alex. Brush	p. 145, q. 8, 9
Isaac Holloway	p. 148, q. 19, 20
Geo. W. Beardslee	pp. 154-5-6, q. 5, 6

The fact that it was an *object* in laying the Rochester and Buffalo pavements to so lay them as to furnish a foothold for horses and to prevent the wheels wearing ruts, is a circumstance which alone would render it highly improbable that the ends of the stones were not better adapted to make close joints than the sides.

To have not done so would have been a failure to use a well known means of producing a well known and desired result.

Another evidence of Mr. Eliot's willingness, if not intention, to mislead by his testimony is, that he adopted one construction of the Guidet patent when comparing its contents with the Rochester and Buffalo pavements, and another construction of it when comparing its contents with the Brooklyn pavement.

When speaking of the Brooklyn pavement, he says that smoothness and unevenness of the stones as mentioned in the claim of the patent are merely relative terms (page 24, question 22, of the record), and that the stones, to bring the pavement within the patent, need not be smooth at their ends, or of any definite degree of roughness or unevenness at their sides; yet when speaking of the Rochester and Buffalo pavements, and undertaking to say whether they correspond with or differ from the patented pavement, as in answer to the 10th question, page 61 of the record, in order to keep those pavements out of the patent he assumes the patent to require the ends of the stones to be *smooth*, and says that as he understands the patent the ends of the stones "must be cut smooth," and that he does not understand the ends of the stones of the Rochester and Buffalo pavements to be smooth.

In answer to question 11, page 23 of the record, Mr. Eliot gives what he understands to be a correct definition of the word "smooth," and says:

> "In a general sense it is that which is such a surface that all portions of it will be in the same plane, provided the surface is a plane surface, or all points shall coincide with a straight line that subtends or connects any two points on a curved or irregular surface."

Taking this definition in connection with what the witness says in answer to the 10th question where he says the patent requires that the ends of the stones "must be cut smooth," and it will be seen how he dared to say that he did not regard it possible to form a pavement substantially like that described and claimed in the Guidet patent with such stones as are used in Rochester and Buffalo. He assumes in this answer that to come within the Guidet patent the stones must be entirely smooth at the ends, and, in fact, gives that requirement as a reason for saying that such a pavement as is described and claimed in the Guidet patent could not be formed of such stones as are used in Rochester and Buffalo. The deception here attempted by the witness consists in assuming that the ends of the stones of the patented pavement need not be smooth, when he wants to say that the Brooklyn pavement is within the patent, and assuming that they must be smooth when he wants to say that the Rochester and Buffalo pavements are not in the patent.

Another farce which Mr. Eliot attempted to enact was his effort to create an immaterial issue by his so called Broadway experiment, described in answer to question 15, page 63 of the record. This experiment, he says, was to ascertain what would be the effect of some of the stones being smaller at the bottom than at the top—that is, wedge shape. Why was this experiment made unless it was to cause the Court to think that the result was important? Over twenty witnesses testified that the stones in the Rochester and Buffalo pavements were as long and as thick at the bottom as they were at the top, and were therefore not wedge shape or smaller at the bottom than at the top. This testimony is referred to under the first division of point one of this brief. This testimony was put in before the second examination of Mr. Eliot, and he dared not, on that examination, say that the stones were smaller at the bottom than at the top. The proof, therefore, was all one way as to whether or not there was a difference in the size of the tops and bottoms of those stones. Why then should he have tried an experiment with stones of a different form? Why should he have had stones prepared in Rochester and transported to New York to illustrate what everybody of common sense knew; that is, that pavement stones of wedge shape being small at the bottom would be forced down by weight on them more than they would if they were large at the bottom? He says the stones with which he tried the experiment "were better than the general selection of such stones, as I found them in the several places in the cities of Rochester and Buffalo." Who knows what he means by *better?* He does not say that the stones he prepared for the experiment corresponded in size, top and bottom, with the stones in the Rochester and Buffalo pavement. The word *better*, which he uses, he may have applied to some other property of the stones, and he may have used that general term to avoid perjury, and at the same time intending to be understood that he meant the relative sizes of the stones, top and bottom. It should be remembered that he was working for large wages, thirty dollars a day, and that he says he worked in this suit four weeks, and that his deposition all the way through bears indications that he endeavored to make himself profitable to his employer, whatever might become of the facts. In this so-called experiment he was endeavoring to create a result entirely immaterial to anything at issue, but which might be paraded into the case with an appearance of important evidence. What honest motive could have prompted him to prepare stones, as he says, of "somewhat wedge shape," and place them small end downward in Broadway to see if they would settle more than those with the large ends downward, when neither he nor any one else had said that the Rochester and Buffalo pavements were composed of such stones, and when over twenty witnesses had testified directly to the contrary? The experiment was about as silly as it was unjustifiable, and the only way of accounting for it is that his employer was a wealthy and liberal man.

In view of the testimony of the Rochester and the Buffalo pavements, it is submitted to your Honors with entire confidence that the Court below was right in holding that the prior use of the pavements laid down in Rochester and Buffalo prior to the date of the alleged invention of the patentee was sufficient to invalidate his patent. But if your Honors shall deem it worth while to look further, your attention is called to the following additional considerations, showing that the reissue patent on which this suit is brought is invalid.

II.

The re-issue patent is not for the same invention as was the original, but is for another and different invention, and that fact appears from a comparison of the original and the re-issue specifications.

The original patent is limited to the upper edges of the sides of the blocks being chamfered.

No block or stone is described or mentioned in the specification of the original patent, except such as are chamfered on the upper edges of the sides, and no pavement is described or claimed in the original patent except such as is composed entirely of stones which are chamfered on the upper edges of their sides. At every place in the specification of the original patent where any attempt is made to describe or define the pavement, or the configuration of the sides of the stones, is the statement that the stones are *chamfered*. Such a statement is at three places in the specification of the original patent, before coming to the claim. In the drawings, the stones are represented with those edges chamfered, and there is no representation in the drawings of *any other form* of stone. The claim of the original patent is *expressly limited* to stones having the upper edges of their sides chamfered, and it is also expressly limited to a pavement formed of such stones. The claim is for—

> "A pavement composed of stone blocks made in the form of parallelopipeds, having their narrow edges or ends cut smooth, and their broad sides purposely cut rugged or uneven, and with chamfered edges, substantially as and for the purpose described."

See original patent at end of this brief

Thus, it appears that both the *description* and the *claim* of the original patent concur in requiring the upper edges of the sides of the stones to be chamfered. This is the most prominent and distinguish-ing feature of the original patent as appears both in the description and in the claim. No other kind of stones are described or mentioned in the original, and no pavement is *described or patented by* said original, except one composed of such stones. No language could have been used more thoroughly incorporating chamfered sides of the stones with the subject-matter of the original patent, as a material part of it, than that which was used. No pavement was known to the original patent without that characterizing feature, and no stones to compose a pavement with open joints were known to the original patent except such as were chamfered. Chamfering the edges of the sides of the stones was the only means described in that patent for making open joints; that and that *only* is set forth as *the means* of securing the open joints.

Having considered what the original patent was for, let us next see what the reissue patent is for.

1st. The reissue entirely dispenses with the chamfered *blocks* as being a feature of the patented pavement; that is, it dispenses with the only material known to the original patent as the material for the patented pavement.

2d. The reissue entirely dispenses with a pavement composed of chamfered blocks which was the only pavement patented by the original patent, and the only pavement described in or known to the original patent.

3d. The reissue describes the use of unchamfered blocks or stones in the construction of a pavement.

4th. The reissue describes a pavement composed of unchamfered stones.

5th. The reissue patents a pavement composed of unchamfered stones.

The reissue is, therefore, for new matter, the pavement it claims is new matter, and the material of which the pavement is constructed is new matter, not described or mentioned in the original.

Stones with chamfered edges essential to the pavement patented by the original patent are not necessarily contained in the pavement patented by the reissue.

The reissue patent describes a pavement as having open joints without the stones being chamfered. Chamfering is mentioned in the reissue patent, but not as a necessity or as important. The specification simply says that the stones may be chamfered.

There is no pavement described in or patented by the original patent, composed of stones whose sides extend straight up to the top of the pavement, and yet that is exactly the pavement patented by the reissue.

A pavement composed of stones having their sides extend straight up to the top of the pavement is an entirely different pavement from that described in and patented by the original patent, and is composed of different material.

The claim of the reissue patent entirely ignores chamfered stones and claims a pavement composed of other stones, and a pavement substantially different from one composed of the chamfered stones. The claim of the reissue reads thus:

> "A pavement composed of stone blocks made in the form of parallelopipeds, having their narrow edges or ends cut smooth, and their broad sides purposely cut rugged or uneven, when the blocks are arranged with their rugged surfaces transversely to the street, substantially as described."

III.

The claim of the Guidet reissue is not for patentable subject matter.

The claim of the Guidet reissue expressly includes blocks whose sides are *purposely* cut rugged or uneven, and excludes all other kinds of blocks. The claim is, therefore, limited to a *purpose or intention*, and purpose or intention is not patentable. If the sides of the stones were not intentionally cut uneven, they are *not the stones that are included in the claim.* Stones whose sides have been accidentally formed uneven, are not included in the claim, but they are excluded from the claim by the claim being expressly limited to stones whose sides were *purposely* cut uneven.

Taking the claim in connection with the description, does not prevent this limitation of the claim. There is nothing in the description sufficient to overrule this language of the claim. The specification speaks of a block as being prepared and so prepared on the sides as to cause the joints running transversely to the street to be open at the top. At folio 363, the specification says: "the surface of which are so prepared," &c. At folio 364, the specification says: "they are so prepared." The words "left rugged" in the following sentence of the specification, at folio 365: "the broad sides or surfaces *b* of my blocks are left rugged, or cut so that the joints between adjoining blocks will be open," may be construed to mean that the sides of the stones are to be so left after being prepared. At any rate there is nothing in that sentence which can control the claim and cause it to be construed to mean the opposite of the plain import of the language used.

The Act of Congress, Section 4,888 of the Revised Statutes, requires that a patentee "shall particularly point out, and distinctly claim the part, improvement or combination which he claims as his invention or discovery."

It is true, that as matter of law, the claim and specification of a patent are to be construed together, but the parts of the specification, other than the claim, are only to be used to interpret the claim, and when the claim is not obscure or uncertain, but is distinct, and clear, and does not require anything to aid in understanding its meaning, the other parts of the specification cannot change the meaning of the claim or in any way affect it.

In *Brooks vs. Fiske*, 15 How., 215, the Supreme Court says:—

> "The claim or summing up, however, is not to be taken alone, but in connection with the specification and drawings; the whole instrument is to be construed together. But we are to look at the others only for the purpose of enabling us to correctly interpret the claim."

The doctrine of Brooks vs. Fiske, is and always has been the law.

Parker vs. Sears, 1 Fish., 99.
Wintermute vs. Redington, 1 Fish., 239.
Kidd vs. Spence, 4 Fish., 37,
Meissner vs. Devoe Co., 9 Blatch., 363.

There is no obscurity in the claim of the Guidet patent, so far as the question whether or not the subject matter is limited to blocks, the sides of which were *purposely* formed rugged or uneven. Nothing is needed to interpret the meaning of the word "purposely." The Court does not need to invoke any other part of the specification to enable it to understand the meaning of the word "purposely." No other part of the specification could in any way affect that word unless it had the effect of striking it out of the claim, which of course the law would not tolerate.

Purpose or intention, forming an element of the subject matter claimed in the Guidet patent, the patent is invalid.

Purpose or intention is neither patentable alone nor as an element of the subject matter patented.

Judge Story as long ago as 1843, in Bean vs. Smallwood, 2 Story, 408, said—" A *purpose* is not patentable,"

Conover vs. Roach, 4 Fish., 17.

Chief Justice Cranch said:—" *Intent* is no ground of a patent."—Law's Digest, 610.

The *end* to be accomplished is not patentable.

Carver vs. Hyde, 16 Pet., 513.

IV.

There was no invention or discovery required in producing the subject matter patented by the reissue patent. The patent for that reason is, therefore, null and void.

There is a definable and a defined class of things, which are the products of inventive genius, and a class which are the products of merely mechanical skill, and others which are so obvious as to require neither genius nor skill to produce them.

In effecting changes in articles and materials employed in useful arts, two functions of mind are employed. One is the inventive faculty, and the other is mechanical skill. They are the genius of the inventor and the skill of the mechanic. The law, by numerous adjudications, has repeatedly recognized:

1st. The distinct existence and operation of these two functions or faculties of mind, and their independent use in shaping and fashioning matter to increase its usefulness.

2d. A difference in the products of these two functions or faculties of mind, holding the one to be patentable and the other not.

It is often difficult to trace the line between the products of the two, and to determine where the skill of the mechanic leaves off and the genius of the inventor begins. But, notwithstanding that difficulty, the two have a distinct existence, a distinct operation, and produce distinct results, and this has been repeatedly affirmed and acted upon by all courts, both in this and in foreign countries.

The following propositions are well settled law, and cannot be denied:

1st. That the products of mere mechanical skill are *not* subjects for patents.

2d. That the products of inventive genius are subjects for patents.

In determining to which class the change belongs, reference must be had to the effect as well as the means. It is one of those cases wherein Curtis, Sec. 39, says, that according to the English authorities, the amount of invention "may be estimated from a compound view of the change effected, and the consequences of that change."

No changes or improvements which are *obvious*, can rise higher in dignity than to belong to the products of the mere skill of a person acquainted with the art or manufacture to which the change belongs; and, as already stated, there is a class of changes which are so obvious and so low in the scale as not to require even skill.

Ransom vs. Mayor, 1 Fish., 252.
Tatham vs. Leroy, 2 Blatch, 486.
Hotchkiss vs. Greenwood, 4 McLean, 461.
Larabee vs. Cortlan, 3 Fish., 5.
Smith vs. Nichols, 21 Wall., 112.
Stimpson vs. Woodman, 10 Wall., 117.
Reckendorfer vs. Faber, 12 Blatch., 68.
Reckendorfer vs. Faber, 2 Otto, 347.

A recent and authoritative exposition of the law on the subject of what constitutes patentable subject-matter, in contradistinction from what fails to be patentable from the want of invention, is contained in a very recent decision of this Court. It is in the last case above cited.

In that case there were two patents; one was issued to Lipman for a drawing pencil, consisting of lead in one end and india-rubber in the other end, constituting an implement which was both a marker and an eraser, the lead and the rubber having a common handle.

The other patent was to Reckendorfer, and for an improvement on the Lipman invention, consisting of an enlargement of the end of the implement which contained the rubber, and a gradual taper therefrom to the end which contained the lead.

The Court, in deciding that case, went at large into the subject of what does or does not constitute patentable subject matter, and said:

> "We come, then, to the question, does the article patented by Lipman and improved by Reckendorfer involve an invention, or is it a product of mechanical skill, or a construction of convenience only?
>
> "The article presented is for the performance of mechanical operations to produce mechanical results, and is a mechanical instrument as much as a brush, a pen, a stamp, a knife, a file, or a screw. Whether it is styled a manufacture, a tool or a machine, it is an instrument intended to produce a useful mechanical result, and the question presents itself, does it embody any new device, or any combination of devices producing a new result?
>
> "The law requires more than a change of form, or juxtaposition of parts, or of the external arrangement of things, or of the order in which they are used, to give patentability (Curtis on Patents, sec. 50; Hailes vs. Van Wormer, 20 Wall., 353). A double use is not patentable, nor does its cheapness make it so (Curtis, sec. 56, 73). An instrument or manufacture which is the result of mechanical skill, merely, is not

> patentable. Mechanical skill is one thing. Invention is a different thing. Perfection of workmanship, however much it may increase the convenience, extend the use, or diminish expense, is not patentable. The distinction between mechanical skill, with its conveniences and advantages, and inventive genius, is recognized in all the cases (Rubber Tip. P. Co. vs. Howard and other cases, *sup.;* Curtis, sec. 72 *b*).
>
> "The combination to be patentable must produce a different force, or effect, or result in the combined forces or processes from that given by their separate parts. There must be a new result produced by their union. If not so, it is only an aggregation of separate elements.
>
> "It may be more convenient to turn over the different ends of the same stick than to lay down one stick and take up another. This, however, is not invention within the patent law, as the authorities cited fully show."

No structure or manufacture is patentable as an invention unless it be such as required invention to produce it. The products of mere mechanical skill are not patentable. There are many new and very useful things produced which are not patentable subject matter, because the production of them did not involve the exercise of that property of mind known as inventiue genius, in contradistinction to mechanical skill.

In considering whether or not the laying of such a pavement as that described in the Guidet patent, required anything more than mechanical skill, three things are to be noticed:

1. The functions or properties of the pavement to be produced.

2. The form of the material, that is, the form of the stones to be used.

3. The manner in which the stones are to be laid—that is, their relation to each other.

1st. As to the functions or properties of the pavement to be laid.

It must have comparatively tight joints longitudinally, and comparatively open joints transversely. These requirements were for the purpose of preventing ruts being worn by the wheels of vehicles, and to furnish foothold for draught animals. There *was no discovery* in either of these *objects* or uses, and none is claimed in behalf of the patentee. Everybody knew that it was useful to prevent horses slipping on a pavement, and useful to prevent ruts being worn into the pavement.

There was *no invention* or discovery in the *means* proposed to attain those objects. Everybody knew that to prevent wheels wearing ruts between pavement stones, tight joints in the direction of the travel of the wheels were the appropriate remedy. This had been familiar knowledge to persons using or observing the use of wheel vehicles as long as such wheels had been used. Everybody knew that open joints crosswise of the streets were the proper means of furnishing foothold for draught animals. This had been familiar knowledge as long as such animals had been used.

2d. As to the form of the material that is, the form of the stones to be used.

There was *no novelty* in the *general form* of the stone blocks to be used. If restricted to the form of a parallelopiped, there was no novelty in it, for that was the form of an old well known mathematical figure, and it was also old in its application to pavement stones, as is proved by the appellee and also admitted by the appellant's patent.

The objects to be attained requiring no discovery, but being matter of common knowledge, and the direction and size of the joints adapted to the attainment of those objects requiring no contrivance or discovery, but being also matter of common knowledge, and the form of stone blocks adopted involving no novelty, it follows that all that remained to be done to produce the pavement patented, was to use the appropriate and well known means of making the longitudinal joints comparitively tight to resist the wearing of ruts, and the transverse joints comparatively open to furnish foothold for draught animals.

3d. As to the manner in which the stones were to be laid—that is, their relation to each other.

Everybody knew that when the surfaces of stones or the surfaces of anything else are to be put in contact, if smooth, they will make a tight joint, and when a tight joint is to be made, everybody knew that smooth surfaces were the proper means of making it. Everybody knew that if an open joint is to be made between the surfaces of stones, or the surfaces of anything else, and that such surfaces are not to be separated by any other material being interposed between them, protuberances on those sufaces are the appropriate means of producing the required joints. The use of such means of producing close and open joints was simply using well know causes to produce well known effects, merely doing what was well understood and had been practiced upon for centuries.

Everybody knew that if a close joint is desirable and the surfaces to come into contact are rough, the proper means to attain the object is to even the surfaces by removing the protuberances; and that if an open joint is desirable, and the surfaces to come into contact are smooth, the proper way of attaining the object is to form protuberances on one or both of the surfaces, or to interpose separate pieces between them.

Again, comparing the patented pavement with the pavement which the patent itself admits was old, shows that there was no patentable invention in the former. What does the patent admit was old? The specification of the reissue contains the following admission, page ——

> "I am aware that pavements have been produced of blocks made in the form of parallelopipeds, but in order to produce open transverse joints, it was found necessary to inter-

> pose, between the adjoining blocks, thin strips of wood or stone."

Here, then, is an admission that a pavement was known composed of blocks in the form of parallelopipeds: that it had open transverse joints, and that it was so laid as to intentionally produce open transverse joints. This of course means that the transverse joints were more open than the longitudinal joints. Therefore, the pavement admitted to have been old at the time of Guidet's alleged invention, was composed of the same blocks, had the same surface, and the same relative width of joints as the pavement claimed by Guidet. Now, what remained to be done to that old pavement to make it precisely the pavement patented by Guidet?

In the old, there was the same form of blocks which is specified in the patent. In the old, there was a stone or wood contact on the sides of the blocks which kept the upper edges of the sides apart to leave an open joint. In the Guidet pavement there is a stone contact between the sides of the stones, to keep the upper edges of the sides apart, so as to leave an open joint. The only difference, therefore, was, that the parts or pieces which formed contact and kept the sides of the stones apart in the Guidet patent, were rigidly attached to or form a part of stone itself, while in the old pavement the parts or pieces which formed contact and kept the upper edges of the stones apart were not part of the stone or rigidly attached to it. Now, all that was necessary to be done to make the pavement which the patent admits was old, precisely like the pavement claimed by Guidet, was to rigidly attach to the sides of the stones the pieces which were already in the proper place, and were there for the purpose of keeping the stones apart. Would fastening those pieces to the sides of the stones have been a patentable invention? Everything was included in that old pavement which was necessary to produce just such a pavement, when completed, as is claimed by Guidet, except that the pieces which separated the stones to make open joints were not rigidly attached to the stones. The form of the blocks was there; the manner of laying them was there; the relative width of the joints was there; separation of the sides of the blocks by stone contact was there, and the function of every part was there. All was there, the same as it is in the Guidet pavement.

Would simply making the protuberances which separated the sides of the stones fast to those sides, instead of having the protuberances that perform that office unfastened, authorize such a patent as that granted to Guidet? Would it be invention to simply make the sides of the blocks uneven by fastening thereto the pieces which were already in their proper places, performing their proper function?

The pavement, admitted by the patent to have been old, contained every essential part which the pavement claimed by Guidet contains, and each part had the same function and performed the same office. The only difference between that old pavement and the Guidet pavement, is, that in the latter the part which separates the sides of the stones to secure an open joint at the top, is fast to the side of the stone, while in the old pavement, that part is there, having the same function and doing the same duty, but is not fastented to the side of the stone.

It is therefore respectfully submitted that there is no patentable invention patented by said reissue patent and that the same is for that reason null and void.

V.

There is no infringement of the Guidet patent proved.

This patent, like all others, when there is no obscurity in the words of the claim must be limited to what is claimed.

The claim is limited to a pavement formed of blocks, having their broad sides *purposely* cut rugged or uneven. To bring the pavement within the patent, it is not sufficient that the broad sides of the blocks be rugged or uneven. They must have been cut so, and that alone is not sufficient; they must have been *purposely* cut so. The claim is to a combination. The elements of the combination are certain specified blocks, and those blocks are so combined as to leave joints of certain relative widths. The specified blocks must be those whose sides have been "purposely cut rugged or uneven."

A pavement composed of blocks approximating to the form of parallelopipeds with the sides rugged or uneven, if the blocks were found in that condition, being as nature formed them, or were accidentally split in that condition, could not be within the Guidet patent, because the claim expressly excludes such material from the patent and limits the patent to stones having sides *purposely* cut rugged or uneven.

There is no proof in the record that the Brooklyn pavements were made of blocks whose sides were purposely cut uneven. The only evidence put in on the part of the appellant to prove infringement, was that of the expert, Eliot, page 22 of the record, and all he said or could say is the following:

> "I also found in said pavements that the broad sides of said blocks or parallelopipeds were 'left rugged,' or rough, or purposely cut so."

This statement does not affirm that the pavement was made of blocks whose sides were purposely cut rugged or uneven, nor does it limit the stones of which the pavement was composed to the kind of stones specified in the claim, and to which the claim is specifically and expressly limited. So that if the question of infringement were to be tried by appellant's testimony alone, without anything to contradict it, it would fail to prove infringement.

On the part of the appellee, there is testimony which proves that the Brooklyn pavement was not composed of blocks whose sides had been purposely cut rugged or uneven.

John Stimpson, who furnished stones to the City of Brooklyn, for pavements, at page 67 of the record, testifies that the sides and ends were all cut alike.

John Booth, who furnished the blocks for the pavement of the streets which are alleged to be paved with the infringing pavement, says that in getting out the stones, nothing was done with a view of making the broad sides rough; that on the contrary, he instructed the men to make them as flat as they could, and that as much effort was made to make the sides smooth as there was to make the ends smooth.

William Grant, who worked for Booth in getting out paving stones which were laid in Brooklyn in the pavements alleged to be an infringement, says pages 84 and 85 of the record, that he received no orders to make the stones smoother on the ends than on the sides; that no more attention was given, or effort made in working the ends than the sides of the stones; that no effort was made to have the sides of the blocks rough or uneven; and that the ends and the sides were the same.

VI.

The City of Brooklyn is not liable for the infringement of Letters Patent by its officers, but redress must be had, if at all, against the officers themselves.

The Legislature has absolved the City of Brooklyn from liability for the misfeasance of any of its officers, in the infringement of a patent, and placed that liability upon the offending officers themselves.

"§ 39. The City of Brooklyn shall not be liable in damages for any nonfeasance or misfeasance of the

Common Council, or any officer of the city or appointee of the Common Council, of any duty imposed upon them, or any or either of them, by the provisions of titles four and five of this act, or of any other duty enjoined upon them, or any or either of them, as officers of government, by any other provision of this act; but the remedy of the party or parties aggrieved for any such nonfeasance or misfeasance, shall be by mandamus or other proceeding or action to compel the performance of the duty, or by other action against the members of the Common Council, officer or appointee, as the rights of such party or parties may by law admit, if at all."

Laws of New York, 1862, chap. 63, page 204, §39.

Laws of New York, 1873, chap. 863, page 1378, § 27.

This section has been fully upheld by the Court of Appeals in all respects, and its decision has been followed and approved by that Court and the Supreme Court of the State in a variety of cases for several years.

Gray vs. City of Brooklyn, 2d Abbt. Ct. of Appeals, 267.

The same, 50 Barb., 365.

A municipal corporation in the State of New York is an artificial being, having such powers and being subject to such liabilities as the Legislature may prescribe. Its liability at common law for the misconduct of its officers while acting in the line of their authority or duty, is a rule which, like all the rules of the common law, is subject to the control of the Legislature. The Legislature created the City of Brooklyn, and it may abolish it. It may enlarge or restrict its powers and liabilities. It has absolute and unlimited control over its creature. This is not merely correct in theory, but it is expressly provided for by a section of the Constitution of the State, which has been maintained by the Supreme Court of the United States.

Constitution, Article VIII., § 1.

"Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws. *All general laws and special acts passed pursuant to this section may be altered, from time to time, or repealed.*"

Article VIII., § 1.

It is doubtful if at common law the city would be liable for the infringement alleged in this case.

In the repavement of public streets, the Commissioners of City Works act under special acts of the Legislature, for specific localities, in the making of improvements local in benefit and character, and to be paid for out of local assessments. They may be said to be State agents for these various localities.

The City of Brooklyn does not acquire the fee to the lands comprising its streets. It takes a mere easement. This easement is not taken for nor owned by itself. In proceedings to thus acquire a right of way for street purposes, the city merely acts for the State in operating the State's right of eminent domain. The result is, the resumption of the sovereign's original title in land to an extent sufficient for street purposes.

The title to the easement acquired is, therefore, in the people of the State; all else is private.

The People et al. vs. Kerr et al., 27 N. Y. Court of Appeals, 188.

In the matter of John and Cherry streets, 19 Wendell, 659.

Hence, it is manifest that the city has no proprietary interest in its streets, or their pavement or repavement. In all the charter acts pertaining to the City of Brooklyn, the work of opening, grading, paving, regrading, repaving, flagging, reflagging or sewering these streets, is made a charge upon the property abutting the streets, and it is repeatedly provided that " in no event shall any expenditure for such work be made a charge upon the city at large."

Laws 1873, chap. 863, title XVIII., sec. 6, page 1366.
Laws 1859, chap 213, sec. 6, page 478.

Under these circumstances it is more than doubtful if the body corporate would be liable at common law for the infringement of a patent by its officer while discharging a duty thus special and local in character, or for the use of the patented article by the locality.

Lorillard vs. Town of Monroe, 11 N. Y., 392; followed in People vs. Supervisors of Chenango, 11 N. Y., 571.
Russell vs. Mayor of New York, 2 Denio, 464-5, 473-481-2-3.
Martin vs. Brooklyn, 1 Hill, 545.
Maxmillian vs. Mayer, 2 Hun, 263; since affirmed by Court of Appeals.
King vs. Brooklyn, 42 Barb., 627.
Meyer vs. Bailey, 2 Denio, 433.

But assuming there was a common law liability, what of it?

Such a liability must be subject to the Legislature which creates the corporation.

Surely it cannot be held that the Legislature cannot create a municipal corporation exempt from liability for the misfeasance of its officers, leaving the officers themselves to bear such liability.

Take the present case. Apart from statute the people of the City of Brooklyn could not be liable to Charles Guidet because Wm. A. Fowler, Lorin Palmer and Robert M. Whiting, Jr., violated his Letters Patent.

Assuming that the people of the City of Brooklyn had never been incorporated, it is clear that they could not be made liable for the act of individuals putting down a pavement on any street or highway.

The complainant cannot find means to fix such a liability upon the people of Brooklyn except through legislative acts.

Had the Legislature abstained wholly from incorating the people of the city, the liability would not have existed.

The fact that the complainant's rights are fixed by Act of Congress, can make no difference.

There is no Act of Congress creating a capacity for liability where none otherwise exists.

The Act of Congress cannot reach a corporation where none exists, or create a corporate liability where the corporation is exempt.

In other words, under the exemption clause, hereby interposed, the officers are liable, the contractors are liable, and all the natural persons engaged in the violation of the patent (if such existed) are liable.

Farther liability Congress does not and could not create.

To establish corporate liability, the Legislature of the State must intervene.

It has not intervened to create a corporate liability.

On the contrary, it has expressly prohibited it. And under such circumstances the complainant can no more recover against the people of the City of Brooklyn than if those people had never been incorporated at all.

The complainant must reach the people through the acts of incorporation, or he cannot reach them at all.

Geo: Gifford
for appellee

Original Guidet Patent, No. 85,814, January 12, 1869.

THE UNITED STATES OF AMERICA, TO ALL TO WHOM THESE LETTERS PATENT SHALL COME:

Whereas, Charles Guidet, of New York, New York, has alleged that he has invented a new and useful improved stone pavement, and has made oath that he is a citizen of the United States; that he verily believes he is the original and first inventor or discoverer of the said invention, and that the same hath not, to his knowledge and belief, been previously known or used, has paid into the Treasury of the United States the sum of thirty five dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor;

These are therefore to grant to the said Charles Guidet, his executors, administrators or assigns, for the term of seventeen years from the twelfth day of January, one thousand eight hundred and sixty-nine, the full and exclusive right and liberty of making, using and vending to others to be used, the said invention, a description whereof is given in the annexed schedule, and made a part of these presents.

In testimony whereof, I have caused these Letters to be made patent, and the seal of the Patent Office to be hereunto affixed.

Given under my hand at the City of Washington this twelfth day of January, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States of America, the ninety-third.

W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office,

ELISHA FOOTE,
Commissioner of Patents.

[L. S.]

UNITED STATES PATENT OFFICE.

CHARLES GUIDET, of New York, N. Y., Letters Patent, No. 85,814, dated January 12, 1869.

Improved Stone Pavement.

The Schedule referred to in these Letters Patent, and making part of the same.

TO ALL TO WHOM IT MAY CONCERN:

Be it known that I, Charles Guidet, of the City, County and State of New York, have invented a new and useful improved pavement, and I do hereby declare the following to be a clear, full and exact description of the same, sufficient to enable others skilled in the art to which my invention appertains to fully understand and use the same, reference being had to the accompanying drawings, making a part of this specification, and in which Figure 1 represents a longitudinal section of this invention.

Figure 2 is a plan or top view thereof.

Similar letters of reference indicate corresponding parts in the two figures. This invention relates to a pavement which is composed of stone blocks forming parallelopipeds, the narrow ends or edges of which are cut smooth, while their broad sides are cut purposely uneven or rugged, the top edges of said broad sides being chamfered off in such a manner that said blocks, when put together form close joints at their narrow ends and open joints at the broadsides, and a pavement is obtained which offers a good foothold for the draught animals, and at the same time a smooth surface for the wheels passing over the same.

A, represents a section of my pavement which is composed of a series of stone blocks, B.

These blocks are cut in the form of parallelopipeds unlike the blocks used in what is known as the "Russ" "Belgian" pavement, which are cut in the form of inverted truncated pyramids, and, furthermore, the narrow edges or ends *a* of my blocks, are cut smooth, while the broad sides or surfaces, *b*, thereof are purposely cut rugged or uneven, and the top edges of these broad sides are chamfered off, as shown at *c*, Fig. 1.

If two inverted truncated pyramids, as used in the Russ, or Belgian, pavement, are placed side by side, a close joint is formed on the top surface, and the pavement thus produced offers no foothold to the draught animals. But, by placing a series of my blocks B together, as shown in Figure 2, the joints between the smooth, narrow edges *a* which run parallel with the sides of the street, become close, while the joints formed between the broad rugged surfaces *b*, with the chamfered edges *c*, which joints run transversely across the street, become open and a pavement is formed which offers a firm hold to the draught animals, while it presents a smooth surface to the wheels passing over it. The open joints left between the rugged surfaces *b* of the blocks, are filled with sand, and the pavement becomes perfectly firm and solid, and the single block is not liable to work loose.

I do not claim broadly as my invention, a pavement composed of blocks made in the form of parallelopipeds, but what I do claim and desire to secure by Letters Patent is:

A pavement composed of stone blocks made in the form of parallelopipeds, having their narrow edges or ends cut smooth and their broad sides purposely cut rugged or uneven, and with chamfered edges, substantially as and for the purpose described.

CHARLES GUIDET.

Witness,
W. HAUFF,
ERNEST F. KASTENHUBER.